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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~1401~~ 229

In the Matter of
JEFFREY FISCHER,
a minor.

APPEAL FROM THE COURT OF APPEALS,
EIGHTH JUDICIAL DISTRICT OF OHIO.

STATEMENT AS TO JURISDICTION.

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Pursuant to Rules 13 (2) and 15 of this Court, appellant files this statement of the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the final judgment below finding appellant to be a delinquent child and sentencing him to indefinite commitment to the Ohio Youth Commission, and the reasons why this Court should exercise such jurisdiction in this case.

OPINIONS BELOW.

The Juvenile Court for Cuyahoga County, Ohio did not deliver a written opinion as such, but did file a formal statement of "findings of fact and conclusions of law" which is reproduced in the appendix to this Jurisdictional Statement at page 8.

The opinion of the Court of Appeals for the Eighth Judicial District of Ohio, in the form of a "memorandum to lawyers," is reproduced in the appendix to this Jurisdictional Statement on page 12.

JURISDICTION.

This appeal is taken from a final judgment made by the Court of Appeals for the Eighth Judicial District of Ohio which affirms the judgment of the Cuyahoga County Juvenile Court sentencing appellant to indefinite commitment to the Ohio Youth Commission. The order of the Court of Appeals was made and entered May 2, 1966, and is the order from which this appeal is taken. Thereafter, the Supreme Court of Ohio exercised its discretion by dismissing an appeal to that Court and denying a motion to certify the record. A motion for rehearing was filed in the Supreme Court of Ohio, which was denied on January 11, 1967. Appendix, p. 17. Notice of appeal to the United States Supreme Court was filed in the Court of Appeals for the Eighth Judicial District of Ohio on April 10, 1967. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257 (2).

QUESTIONS PRESENTED.

Whether the Juvenile Code of Ohio, Ohio Revised Code Sections 2151.01 through 2151.99 violates the V, VI, and XIV Amendments to the United States Constitution; on its face, or as construed and applied to this case, so that this appellant was deprived of his Constitutional rights at the trial of his case before a juvenile judge in which:

A pretrial confession to a police officer after a lie detector test, administered by a police officer, was admitted into evidence despite the facts that the minor, (age 17):

1. Was not represented by Counsel,

2. Was not advised of his right to have Counsel,

3. Was not advised of his right to remain silent,

4. Was not advised of his right against self-incrimination,

5. Had been under psychiatric care for more than one year prior to the confession, his illness consisting of guilt feelings for acts he did not commit,

6. Testified that his confession was not truthful and was not given voluntarily,

7. There was no other evidence against the appellant except the alleged confession.

STATUTES INVOLVED.

The Ohio Revised Code, Section 2151.01 through Section 2151.99 is reproduced in full beginning at page 17 of the appendix to this Jurisdictional Statement and are the statutes involved in this case.

STATEMENT OF THE CASE.

In October of 1963 and in May and July of 1964 a total of four fires occurred in garages in the neighborhood in which appellant resided together with his parents. One of such fires occurred in the garage of appellant and destroyed many of his own goods. The fires were apparently of incendiary origin. The police decided to question all children living in that neighborhood. They began the questioning with the appellant.

For some time prior to the fires and questioning of appellant, appellant was under the care of a psychiatrist. Appendix, page 51. His illness was that of immense guilt feelings for things he did not do and things over which he had no control. Appendix, page 54.

Appellant's questioning was performed in two stages, the latter being in an "interrogation room" at a police station. This room contained lie detector apparatus, hidden microphones, and one-way mirrors. Appendix, page 55. Appellant and the police were alone in the room at the time of the questioning. Appendix, page 55. After a period of time, appellant "confessed." Upon being released from the police station, however, appellant telephoned the police and repudiated his "confession."

At no time prior to such "confession" was appellant or his parents advised of a right of counsel, a right to remain silent, a right and privilege against self-incrimination, nor of the possible consequences of charges which might be brought against appellant as a result of such questioning.

Subsequent to the confession, delinquency charges were brought against the appellant. Thereafter, prior to trial, no one else was questioned by the police about the fires. Appendix, pages 55-56.

After the bringing of the charges, appellant's parents became aware that they needed counsel, and did in fact retain counsel. Shortly thereafter, a trial on the charges was held before the Juvenile Court of Cuyahoga County, Ohio. During the trial appellant expressly repudiated his "confession." Appendix, page 56. There was no other evidence against appellant. The court, nevertheless, held the "confession" to be valid and admissible, over the strenuous objection of counsel. Appendix, page 56. The court found appellant to be guilty and, according to its "separate findings of fact and conclusions of law," based such findings solely upon the confession. Appendix, page 8.

Appellant was then sentenced indefinitely to the Ohio Youth Commission. Such Commission has unlimited discretion, including the discretion to incarcerate the person in a correctional institution.

Appropriate post-conviction motions in the trial court were all overruled. Thereafter, an appeal was taken to the Court of Appeals for the Eighth Judicial District of Ohio setting forth substantially the same questions here raised. The Court of Appeals, reaffirming an earlier decision, held "* * * the V and VI Amendments to the United States Constitution, being applicable only to the rights of accused persons charged with criminal offenses, do not apply * * *." Appendix, page 16. The judgment of the Juvenile Court was thus affirmed.

The Ohio Supreme Court, having discretion as to what cases it will hear, declined to review the decision of the Court of Appeals.

CONSTITUTIONAL QUESTIONS PRESENTED.

Recently this Court held that certain fundamental requirements of due process are applicable to those charged in Juvenile Court proceedings in circumstances such that a guilty finding might mean that the youth could be incarcerated. *In re Gault*, __ U. S. __; 35 Law Week 4399.

While several constitutional questions regarding due process were raised and decided in the *Gault* decision, only the narrow, but important issues, of the right to counsel, the right to remain silent, and the privilege against self-incrimination are raised and squarely presented here.

The trial of appellant began November 17, 1964. The trial of Frances Gault was concluded on June 15, 1964. The *Gault* case was argued in this Court on the same day as appellant argued his motion to certify in the Ohio Supreme Court. On the next day Counsel for appellant first became aware of the *Gault* case. Counsel for appellant thereupon immediately wrote to the Ohio Supreme Court, Appendix, page 57, and requested that they take notice of the *Gault* case and delay their decision until this Court entered its decision. The Supreme Court of Ohio chose not to delay its decision.

The holdings of the *Gault* decision are extremely important in the instant case as they mean the difference between dismissal, or acquittal, or incarceration, to appellant. No evidence of any consequential probative value was ever presented against appellant. His conviction was based solely upon a confession obtained without the presence of counsel, or objective knowledge of either the youth or his parents of a right to counsel. The confession itself was of doubtful validity in view of appellant's pre-existing mental problems and psychiatric care, and the circumstances under which the confession was obtained cast serious doubt upon its voluntariness.

In view of the specific holdings of the *Gault* decision and the reasoning set forth in the opinion of such decision, manifestly the issues here presented are governed by *Gault*, but because of the accident of chronology appellant faces possible incarceration.

CONCLUSION.

Because the *Gault* decision specifically ruled on the questions here presented, it is respectfully submitted that a summary ruling by this Court is in order by which jurisdiction is exercised and the case reversed, or at the very least, remanded for further proceedings not inconsistent with the *Gault* decision.

Respectfully submitted,

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APPENDIX.

SEPARATE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(February 3, 1965.)

Counsel for the child herein having timely requested in writing that the Court separately state its findings of facts and conclusions of law the Court does so as follows:

Since cause No. 217,144 and cause No. 218,241 were tried jointly, relate to the same child, Jeffrey Fischer, the same petitioner and the same type of law violations the said findings of fact and conclusions of law in both the aforementioned causes are herewith combined in one statement and are ordered filed in each cause and are to be considered therein as they apply to the particular cause number.

1. Jeffrey Fischer is now 17 years of age and will be 18 on March 21, 1965.

2. On October 11, 1963, about 8:55 P.M., a fire occurred in the garage of the Ross residence located at 2623 Milton Road, University Heights. The back wall of the garage was burned through and the paint on the hood of an automobile parked therein was damaged. A card board carton which contained packing material such as shavings and excelsior and which had been placed there the day preceding the fire (October 10, 1963) by the Ross', having been the container in which a record player had been delivered on that day, was involved in this fire.

3. On May 2, 1964, about 9:45 P.M., a fire occurred in the addition attached to the Shapiro garage of the residence located at 2613 Milton Road, University Heights. Among other things a card board box and cancelled checks contained therein were partially burned.

4. On July 23, 1964, about 10:00 P.M., a fire occurred in the garage of the Sheber residence destroying said garage and a car parked therein. There was a wooden desk at the rear of this garage near the point of origin of this fire. This fire spread to the Berk home, the next house south of Sheber's, causing damage to house, garage and tool shed.

5. On July 30, 1964 about 10:40 P.M. a fire occurred in the garage at the Fischer residence located at 2620 Milton, completely destroying the garage. This is the home of Jeffrey Fischer. This fire started in the rear of the garage where rubbish containers containing rags were placed.

6. All of these fires occurred in the immediate vicinity of Jeffrey Fischer's home—his own garage, the garage on the immediate southerly side of his residence (Sheber's); the garages of two homes across the street from his residence (one immediately north of the house directly across the street and the other immediately south of the house across the street).

7. The facts and circumstances pertaining to all the fires show that the fires could not have been accidental and that all fires were of incendiary origin. Evidence that no accelerants were used in connection with these fires outweighed evidence to the contrary.

8. Jeffrey Fischer was in the immediate vicinity of all of these fires when they occurred. It would have taken him no more than two or three minutes to go to and from his home to the scene of all fires—perhaps less than a minute in the case of his own garage and the Sheber garage. The Fischer fire occurred latest in time of day (10:40 P.M.). Jeffrey had returned home shortly before this from an outing with his parents. At the time of the

other fires, Shapiro's, Sheber's and Ross', Jeffrey's parents were not at home.

9. Jeffrey Fischer freely confessed in general terms to Sergeant Schaar of the Shaker Heights Police Department that he set all the fires as alleged in cause No. 217,144 and cause No. 218,241. He freely admitted to setting all these fires in detail to Detective Carr of the University Heights Police Department.

Jeffrey Fischer made these voluntary admissions following a polygraph test, which was administered to him with the consent of his parents at the Shaker Heights Police Department. The results of the polygraph test were not admitted in evidence. His parents had accompanied him to the Shaker Heights Police Station and were able to watch and hear Detective Carr's interrogation of Jeffrey Fischer in a room adjacent to the interrogation room at the Shaker Heights Police Department. The interrogation room is so constructed that one can see in from the adjacent room without being observed from the interrogation room. The interrogation room is equipped with microphones so that conversation therein can be heard in the observation room. No threats, coercion or intimidation was employed by Detective Carr or Sergeant Schaar in eliciting the admission from Jeffrey Fischer. From the Court's observation of Jeffrey Fischer during four weeks of trial he is not a personality who would lose composure and control and confess to something he did not do.

In his confession to Detective Carr Jeffrey Fischer said he started the Ross' fire with a match in the record player carton (placed there the day before by Mr. Ross). The evidence showed that this carton had been involved in the fire. Jeffrey Fischer told Detective Carr he started the Shapiro fire in a box of cancelled checks—a box of can-

celled checks was involved in the Shapiro fire. Jeffrey Fischer told Detective Carr that he started the Sheber fire with a match by lighting some papers on the top of a wooden desk—a wooden desk was involved in the Sheber fire. Finally he told Detective Carr that he started the fire in the Fischer garage in rubbish containers containing rags and old clothing in the rear of the garage—clothing in rubbish containers was involved in the Fischer fire. Jeffrey Fischer told Detective Carr that he set his own garage on fire to avert suspicion from himself since he knew he was suspected of starting the other fires.

From the evidence the only way in which Jeffrey Fischer could have had knowledge of the particular origin of these fires was to have set them himself as he said he did.

10. After the interrogation of Jeffrey Fischer his parents thanked the police for their courteous treatment and several days later telephoned Detective Carr while they were en route to New York City and again thanked him. It was not until about a week after the interrogation when the family returned from the trip to New York that Jeffrey Fischer came to the University Heights Police Department and repudiated his confession.

11. The evidence submitted in support of the delinquency petitions was not successfully rebutted by evidence submitted in behalf of Jeffrey Fischer.

CONCLUSIONS OF LAW.

1. Each of the unlawful acts complained of in cause No. 217,144 and cause No. 218,241 which the Court has found that Jeffrey Fischer committed constitutes the violation of a law of this state, i.e. Section 2907.02 Revised Code of Ohio (Arson).

2. Jeffrey Fischer being under eighteen years of age is a "child" in contemplation of law. Section 2151.01 (B) (1) Revised Code of Ohio.

3. Jeffrey Fischer being a "child" who has violated the law of Ohio, as herein complained of, is a delinquent child as defined by Section 2151.02 (A) Revised Code of Ohio.

WALTER G. WHITLATCH,
Judge.

MEMORANDUM OF COURT OF APPEALS TO LAWYERS.

(March 31, 1966.)

This appeal comes to this Court in an appeal from an order of the Juvenile Court of Cuyahoga County finding Jeffrey Fischer (a minor of 17 years of age at the time of the conduct asserted as the basis for the proceeding) to be a delinquent child, and a subsequent order of commitment to the Youth Commission of Ohio.

It was alleged by the first complaint that the said minor wilfully and maliciously set fire to a garage at 2628 Milton Road on the 23rd day of July, 1964, and also that on the 30th day of July, 1964, he set fire to a garage and dwelling house at 2620 Milton Road. In a subsequent complaint it is alleged that Jeffrey Fischer, a minor of seventeen years of age, did, on October 9, 1964, set fire to a garage at 2623 Milton Road and on October 11, 1964 attempted to set fire to a garage at 2623 Milton Road.

The misconduct thus charged as the basis for declaring the said minor a delinquent child, if charged against

a person eighteen years of age or older, would, if proved by the proper degree of proof, constitute a felony.

Section 2151.35, Revised Code, provides that in a proceeding in Juvenile Court involving an infant an informal hearing shall be had affording the minor all rights and privileges of Section 2935.14, Revised Code, and the right to counsel. Section 2935.14, Revised Code, provides that one arrested on a charge of felony who is unable to furnish bail shall have the right to communicate with an attorney-at-law or at least one relative to arrange bail, together with the privilege of conferring privately with counsel.

Section 2151.35, Revised Code, paragraph (E), also provides that in a case where the minor put upon trial is a male who is over sixteen years of age, is found to have committed an act which, if committed by an adult, would be a felony, the Juvenile Court may commit such minor to the Ohio State Reformatory.

The transcript shows that beginning November 17, 1964, hearings were had on seventeen subsequent days until January 15, 1965, (a practice not to be recommended) when the court made the following entry:

> "This matter came on for further hearing this fifteenth day of January, 1965, before the Honorable Walter G. Whitlatch for decision, having been heretofore heard and submitted on December 31, 1964. The Court having heard all the evidence and being fully advised in the premises, finds: That the allegations of the petition are true and that the said Jeffrey Fischer is a delinquent child. It is, therefore, ordered that this matter be continued until February 3, 1965 at 2:00 o'clock P.M. for disposition."

This order was journalized or filed for journalization on that day.

On January 18, 1965, the minor filed a motion to defer disposition of the case until motions for judgment not-

withstanding the verdict, or in the alternative, a motion for new trial, were heard. On January 18, 1965, the minor also requested in writing findings of fact and conclusions of law which motion was granted on that day and the findings of the Court have been filed among the papers in this case.

On January 25, 1965, the minor filed a motion for new trial, a motion for judgment notwithstanding the verdict and a motion to vacate the entry of January 15, 1965. On February 8, 1965, all of these motions were overruled by the court's journal entry of that date which also shows that an oral motion to defer disposition of the case, pending appeal, was made and overruled. The journal entry then provides:

> "* * * Thereupon this matter came on for disposition as to Jeffrey Fischer heretofore adjudged a delinquent child. * * * Said delinquent child * * * is committed to the permanent care and custody of Youth Commission, State of Ohio. * * *."

The notice of appeal was filed on February 8, 1965, setting forth the "orders and judgments * * * of the 18th day of January 1965 * * * and * * * the 8th day of February, 1965 * * *" as the orders appealed from.

The appellant claims the following errors:

"1. The Court erred in admitting defendant's alleged confession over his objection.

"2. The verdict and judgment of the trial court is not sustained by sufficient evidence and is contrary to law.

"3. The Court erred in receiving evidence of which defendant had no knowledge, and without an opportunity for cross-examination.

"4. The statute under which defendant was tried, Ohio Rev. Code Sec. 2151.35, is in violation of the

Ohio Constitution—Article I, Section 1, 5, and 10, and is in violation of the Constitution of the United States—Amendments V, VI and XIV.

"5. Other errors apparent from the record."

The question of whether or not a juvenile, after trial and decision of the court, on a petition charging him to be a delinquent, may file a motion for new trial, and, if filed, whether such filing tolls the time for filing a notice of appeal, need not be considered in this case. The entry of January 15, 1965, finding the minor to be a delinquent child, and passing the case for disposition, was not a final order from which an appeal could be taken. Therefore, the motions filed and disposed of between January 15, 1965 and February 8, 1965, had no effect on the procedural requirements of the case. The final order was filed for journalization on February 8, 1965, from which the appeal was properly taken. This conclusion is based on the case of *Priester v. State Foundry Co.*, 172 Ohio St. 28, where, in the second paragraph of the syllabus, it is stated:

> "2. There can be no appeal from an order rendered pursuant to a motion for summary judgment which order does not purport to be a judgment upon the whole case or for all the relief asked, even though such order purports to be a judgment upon part of the case and for part of the relief asked."

The finding of delinquency, with the statement that the disposition of the case is continued to a future date, is not a final order.

Assignment of error No. four concerns the constitutionality of the method of trial of an infant charged under the Juvenile Court Act as a delinquent as provided by Section 2151.35, Revised Code. Not only is one thus charged not entitled to a trial by jury but the right to be

released on bail or otherwise pending trial, as provided in Section 2151.31, Revised Code, is, in part, denied. See also Section 2151.16, Revised Code, providing for conducting a trial by referee, thus taking testimony without the presence of the accused. Notwithstanding these provisions, the Supreme Court in the case of *Cope v. Campbell, Sheriff*, 175 Ohio St. 475, has held that the constitutional rights of an infant are not violated by the trial procedures defined by the Juvenile Court Act. In this case, one Roy Cope, a seventeen year old boy, upon the complaint of a caseworker, in the service of the Juvenile Court, was found to be a delinquent child in an ex parte proceeding or hearing for the reason that he had committed an act of malicious entry in a case which, if committed by an adult, would have been a felony. The syllabus of the case provides:

> "1. Proceedings in the Juvenile Court are civil in nature and not criminal. Section 2151.35, Revised Code, implies protection for the minor and not punishment.
>
> "2. Section 10, Article I of the Ohio Constitution, and the Fifth and Sixth Amendments to the United States Constitution, being applicable only to the rights of accused persons charged with criminal offenses, do not apply to, or require the appointment of counsel in, a delinquent-child proceeding in the Juvenile Court."

See also *In re: Darnell*, 173 Ohio St. 335, where the court said in the syllabus:

> "The provisions of Section 2151.35 (E), Revised Code, relating to the hearing and commitment of a delinquent child without an indictment or a jury trial are not violative of Section 5 or 10 of Article I of the Constitution of Ohio."

It is clear, therefore, that the claimed error on constitutional grounds set out in assignment No. four cannot be sustained. For the same reason claims of error No. one and No. three are overruled.

Claim of error No. two is overruled for the reason that there is sufficient credible evidence in the record to support the judgment.

Judgment affirmed.

ARTL, C. J., SKEEL, J., SILBERT, J. concur.

ORDER OF SUPREME COURT OF OHIO DENYING REHEARING.

(January 11, 1967.)

It is ordered by the court that rehearing in this case is denied.

OHIO REVISED CODE, CHAPTER 2151: JUVENILE COURT.

§ 2151.01 Definitions. (GC § 1639-1)

(A) As used in the Revised Code, "juvenile judge" or "juvenile court" means the judge or the court exercising the powers and jurisdiction conferred in sections 2151.01 to 2151.54, inclusive, of the Revised Code.

(B) As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code:

(1) "Child" includes any child under eighteen years of age, except that wherever reference is made in such sections to a crippled or otherwise physically handicapped child "child" includes any person under twenty-one years of age.

(2) "Adult" includes any person eighteen years of age, or over, who is not a "child" within the meaning of division (B) (1) of this section.

(3) "Foster home" means a family home in which any child is received apart from his parents for care, supervision, or training.

(4) "Certified foster home" means a foster home operated by persons holding a permit in force, issued pursuant to sections 5103.03 to 5103.05, inclusive, of the Revised Code.

(5) "Organization" means any institution, public, semipublic, or private, and any private association, society, or agency located or operating in the state, incorporated or unincorporated, having among its functions the furnishing of protective services or care for children, or the placement of children in foster homes or elsewhere.

(6) "Certified organization" means any organization mentioned under division (B) (5) of this section which holds a certificate in force, issued pursuant to sections 5103.03 to 5103.05, inclusive, of the Revised Code.

(7) "Relative" of, or person "related by blood or marriage" to any child means any person or the spouse of any person whose relationship to such child is not more distant than that of first cousin; that is, not more distant than four degrees of relationship reckoned according to civil law.

§ 2151.02 "Delinquent child" defined. (GC § 1639-2)

As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, "delinquent child" includes any child:

(A) Who violates any law of this state, the United States, or any ordinance or regulation of a subdivision of the state;

(B) Who does not subject himself to the reasonable control of his parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;

(C) Who is an habitual truant from home or school;

(D) Who so deports himself as to injure or endanger the morals or health of himself or others;

(E) Who attempts to enter the marriage relation in any state without the consent of his parents, custodian, legal guardian, or other legal authority.

§ 2151.03 "Neglected child" defined. (GC § 1639-3)

As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, "neglected child" includes any child:

(A) Who is abandoned by his parents, guardian or custodian;

(B) Who lacks proper parental care because of the faults or habits of his parents, guardian, or custodian;

(C) Whose parents, guardian, or custodian neglects or refuses to provide him with proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals, or well being;

(D) Whose parents, guardian, or custodian neglects or refuses to provide the special care made necessary by his mental condition;

(E) Who is found in a disreputable place, visits or patronizes a place prohibited by law; or associates with vagrant, vicious, criminal, notorious, or immoral persons;

(F) Who engages in an occupation prohibited by law, or is in a situation dangerous to life or limb or injurious to the health or morals of himself or others.

§ 2151.04 "Dependent child" defined. (GC § 1639-4)

As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, "dependent child" includes any child:

(A) Who is homeless or destitute or without proper care or support, through no fault of his parents, guardian, or custodian;

(B) Who lacks proper care or support by reason of the mental or physical condition of his parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming his guardianship.

§ 2151.05 Child without proper parental care. (GC § 1639-5)

Under sections 2151.01 to 2151.54, inclusive, of the Revised Code, a child whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected, or delinquent; whose parents, stepparents, guardian, or custodian, when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or whose parents, stepparents, guardian, or custodian fail to subject such child to necessary discipline is without proper parental care or guardianship.

§ 2151.06 Residence or legal settlement. (GC § 1639-6)

Under sections 2151.01 to 2151.54, inclusive, of the Revised Code, a child has the same residence or legal settlement as his parents, legal guardian of his person, or his custodian who stands in the relation of loco parentis.

§ 2151.07 Court having jurisdiction; absence of judge. (GC § 1639-7)

The juvenile court, or the court of common pleas, division of domestic relations, of any county, separately and independently created, established, and functioning as such, has and shall exercise the powers and jurisdiction conferred in sections 2151.01 to 2151.54, inclusive, of the Revised Code. Except in counties in which there now is, or may hereafter be created, a separate and independent juvenile court or court of domestic relations, there is hereby established within the probate court a juvenile court, presided over by the probate judge, which shall be a court of record and exercise the powers and jurisdiction of such a court.

Whenever the juvenile judge of the juvenile court is absent from the county, or is unable to attend court, or the volume of cases pending in court necessitates it, upon the request of said judge, the presiding judge of the court of common pleas shall assign a judge of the court of common pleas of the county to act in his place or in conjunction with him. If no such judge is available for said purpose, the chief justice of the supreme court shall assign a judge of the court of common pleas, a juvenile judge, or a probate judge from some other county to act in the place of such judge or in conjunction with him, who shall receive such compensation and expenses for his services as is provided by section 141.07 of the Revised Code for judges assigned to hold court in courts of common pleas.

§ 2151.08 Juvenile court in Hamilton county. (GC § 1639-8)

In Hamilton county the powers and jurisdiction conferred by sections 2151.01 to 2151.54, inclusive, of the Revised Code, shall be exercised by the court of common

pleas, and every sixth year, one of the judges of the court of common pleas to be elected at such times shall be elected as a judge of the court of common pleas, division of domestic relations. All juvenile work arising under such sections, and all divorce and alimony cases shall be assigned to such judge.

§ 2151.09 Separate building and site may be purchased or leased. (GC § 1639-15)

Upon the advice and recommendation of the juvenile judge, the board of county commissioners may provide by purchase, lease, or otherwise a separate building and site to be known as "the juvenile court" at a convenient location within the county which shall be appropriately constructed, arranged, furnished, and maintained for the convenient and efficient transaction of the business of the court and all parts thereof and its employees, including adequate facilities to be used as laboratories, dispensaries, or clinics for the use of scientific specialists connected with the court.

§ 2151.10 Appropriation for expenses of the court and maintenance of children. (GC § 1639-57)

The board of county commissioners shall appropriate such sum of money each year as will meet all the administrative expense of the juvenile court, including reasonable expenses of the juvenile judge and such officers and employees as he may designate in attending conferences at which juvenile or welfare problems are discussed, and such sum each year as will provide for the maintenance and operation of the detention home, the care, maintenance, education, and support of neglected, dependent, and delinquent children, other than children entitled to aid under sections 5107.01 to 5107.16, inclusive, of the Revised

Code, and for necessary orthopedic, surgical, and medical treatment, and special care as may be ordered by the court for any neglected, dependent, or delinquent children. All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge.

§ 2151.11 Compensation of juvenile judge; limitation. (GC § 1639-7a)

In all counties where the state is not paying a salary direct to the juvenile judge, the state shall pay fifteen hundred dollars annually into the county treasury of the county wherein such judge was elected. The judge in such counties shall receive as his annual compensation fifteen hundred dollars, provided the combined allowances and compensation of the probate judge and juvenile judge of said county shall not exceed the total salary provided by sections 141.04 to 141.07, inclusive, of the Revised Code, for a judge of the court of common pleas in said county. Said limitation shall be restricted only by the formula established for the total salary of a judge of the court of common pleas in said county whose term of office has begun, or will begin, subsequent to September 18, 1947. Any unused portion of said fund shall remain in the county treasury to be used in the maintenance and operation of the juvenile court.

§ 2151.12 Clerk; bond; judge as clerk. (GC § 1639-17)

Whenever the courts of common pleas, division of domestic relations, exercise the powers and jurisdictions conferred in sections 2151.01 to 2151.54, inclusive, of the Revised Code, the clerks of courts of common pleas shall keep the records of such courts. In all other cases the juvenile judge shall be the clerk of his own court.

In counties in which the juvenile judge is clerk of his own court, before entering upon the duties of his office as such clerk, he shall execute and file with the county treasurer a bond in a sum to be determined by the board of county commissioners, with sufficient surety to be approved by said board, conditioned for the faithful performance of his duties as clerk. Said bond shall be given for the benefit of the county, the state, or any person who may suffer loss by reason of a default in any of the conditions of said bond.

§ 2151.13 Employee; compensation; bond. (GC § 1639-18)

The juvenile judge may appoint such bailiffs, probation officers, and other employees as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. The juvenile court may by entry on its journal authorize any deputy clerk to administer oaths when necessary in the discharge of his duties. Such employees shall serve during the pleasure of the judge.

The compensation and expenses of all employees and the salary and expenses of the judge shall be paid in semimonthly installments by the county treasurer from the money appropriated for the operation of the court, upon the warrant of the county auditor, certified to by the judge.

The judge may require any employee to give bond in the sum of not less than one thousand dollars, conditioned for the honest and faithful performance of his duties. The sureties on such bonds shall be approved in the manner provided by section 2151.12 of the Revised Code. The judge shall not be personally liable for the default, misfeasance, or nonfeasance of any employee from whom a bond has been required.

§ 2151.14 Duties and powers of probation department; records; command assistance. (GC § 1639-19)

The chief probation officer, under the direction of the juvenile judge, shall have charge of the work of the probation department. The department shall make such investigations as the juvenile court directs, keep a written record of such investigation, and submit the same to the judge or deal with them as he directs. The department shall furnish to any person placed on probation a statement of the conditions of probation and shall instruct him regarding them. The department shall keep informed concerning the conduct and condition of each person under its supervision and shall report thereon to the judge as he directs. Each probation officer shall use all suitable methods to aid persons on probation and to bring about improvement in their conduct and condition. The department shall keep full records of its work, keep accurate and complete accounts of money collected from persons under its supervision, give receipts therefor, and make reports thereon as the judge directs.

The reports and records of the department shall be considered confidential information and shall not be made public. A probation officer may serve the process of the court within or without the county, and may make arrests without warrant upon reasonable information or upon view of the violation of sections 2151.01 to 2151.54, inclusive, of the Revised Code, detain the person arrested pending the issuance of a warrant, and perform such other duties, incident to his office, as the judge directs. All sheriffs, deputy sheriffs, constables, marshals, chiefs of police, and other police officers shall render assistance to probation officers in the performance of their duties when requested to do so by any probation officer.

§ 2151.15 Powers and duties vested in county department of probation. (GC § 1639-20)

When a county department of probation has been established in the county and the juvenile judge does not establish a probation department within the juvenile court as provided in section 2151.14 of the Revised Code, all powers and duties of the probation department provided for in sections 2151.01 to 2151.54, inclusive, of the Revised Code, shall vest in and be imposed upon such county department of probation.

In counties in which a county department of probation has been or is hereafter established the judge may transfer to such department all or any part of the powers and duties of his own probation department; provided that all juvenile cases shall be handled within a county department of probation exclusively by an officer or division separate and distinct from the officers or division handling adult cases.

§ 2151.16 Referees; powers and duties. (GC § 1639-21)

The juvenile judge may appoint and fix the compensation of referees who shall have the usual power of masters in chancery cases, provided, in all such cases submitted to them by the juvenile court, they shall hear the testimony of witnesses and certify to the judge their findings upon the case submitted to them, together with their recommendation as to the judgment or order to be made in the case in question. The court, after notice to the parties in the case of the presentation of such findings and recommendation, may make the order recommended by the referee, or any other order in the judgment of the court required by the findings of the referee, or may hear additional testimony, or may set aside said findings and

hear the case anew. In appointing a referee for the trial of females, a female referee shall be appointed where possible.

§ 2151.17 Rules of juvenile court. (GC § 1639-11)

The juvenile court may prescribe rules regulating the docketing and hearing of causes, motions, and demurrers, and such other matters as are necessary for the orderly conduct of its business and the prevention of delay, and for the government of its officers and employees, including their conduct, duties, hours, expenses, leaves of absence, and vacations.

§ 2151.18 Records; annual report; copies for distribution. (GC § 1639-13)

The juvenile court shall maintain records of all official cases brought before it, including an appearance docket, a journal, and a cashbook. The parents of any child affected, if living, or if deceased, the nearest of kin, may inspect such records, either in person or by counsel during the hours in which such court is open.

Not later than June of each year, the court shall prepare an annual report covering the preceding calendar year showing the number and kinds of cases that have come before it, the disposition thereof, and such other data pertaining to the work of the court as the juvenile judge directs or as the department of public welfare requests. Copies of such report shall be filed with such department and with the board of county commissioners. With the approval of such board copies may be printed for distribution to persons and agencies interested in the court or community program for dependent, neglected, and delinquent children. The number of copies ordered printed and the estimated cost of each printed copy shall

appear on each copy of such report printed for distribution.

§ 2151.19 Summons; expense. (GC §§ 1639-52, 1639-53)

The summons, warrants, citations, subpoenas, and other writs of the juvenile court may issue to a probation officer of any such court or to the sheriff of any county or any marshal, constable, or police officer, and the provisions of law relating to the subpoenaing of witnesses in other cases shall apply in so far as they are applicable.

When a summons, warrant, citation, subpoena, or other writ is issued to any such officer, other than a probation officer, the expense in serving the same shall be paid by the county, township, or municipal corporation in the manner prescribed for the payment of sheriffs, deputies, assistants, and other employees.

§ 2151.20 Seal of court; dimensions. (GC § 1639-9)

Juvenile courts within the probate court shall have a seal which shall be one and three-fourths inches in diameter and have engraved thereon the coat of arms of the state, surrounded by the words "juvenile court ____ county."

The seal of other courts exercising the powers and jurisdiction conferred in sections 2151.01 to 2151.54, inclusive, of the Revised Code, shall be attached to all writs and processes.

§ 2151.21 Jurisdiction in contempt. (GC § 1639-10)

The juvenile court has the same jurisdiction in contempt as courts of common pleas.

§ 2151.22 Terms of court; sessions. (GC § 1639-12)

The courts of common pleas, division of domestic relations, exercising powers and jurisdiction conferred in sections 2151.01 to 2151.54, inclusive, of the Revised Code, shall have the same terms as courts of common pleas. Separate and independent juvenile courts shall have the terms provided by law for said courts. Juvenile courts within the probate court shall have the same terms as the probate court. All actions and other business under such sections pending at the expiration of any term of court is automatically continued without further order. The judge may adjourn court or continue any case from day to day in the same term or any day in the next term whenever, in his opinion, such continuance is warranted.

Sessions of the court may be held at such places throughout the county as the judge shall from time to time determine.

§ 2151.23 Jurisdiction. (GC § 1639-16)

(A) The juvenile court has exclusive original jurisdiction under the Revised Code:

(1) Concerning any child who is delinquent, neglected, dependent, crippled, or otherwise physically handicapped;

(2) To determine the custody of any child not a ward of another court;

(3) To determine the paternity of any child alleged to have been born out of wedlock and to provide for the support of such child, subject to the concurrent jurisdiction of other courts;

(B) Such court has original jurisdiction to determine all cases of misdemeanors charging adults:

(1) With contributing to, encouraging, or tending to cause by any act or omission the delinquency, neglect, or dependency of any child;

(2) With any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance;

(3) With abandonment or failure to provide subsistence to any child for which he is legally responsible.

(C) Such court, except as to juvenile courts separately and independently created, has jurisdiction to hear, determine, and make a record of any action for divorce or alimony involving the custody or care of children filed in the court of common pleas and certified by the presiding judge of the court of common pleas with all the papers filed therein to the court for trial, provided that no such certification shall be made to any court unless the consent of the juvenile judge is first obtained. After such certification is made and consent obtained, the court shall proceed as if such action were originally begun in said court, except as to awards for alimony or support due and unpaid at the time of certification, over which the court has no jurisdiction.

(D) Such court has jurisdiction to hear and determine the case of any child certified to the court by any court of competent jurisdiction, and to make disposition of said child in accordance with sections 2151.01 to 2151.54, inclusive, of the Revised Code.

§ 2151.24 Separate room for hearings. (GC § 1639-14)

The board of county commissioners shall provide a special room not used for the trial of criminal or adult cases, when available, for the hearing of the cases of dependent, neglected, and delinquent children.

§ 2151.25 Arrest of child. (GC § 1639-29)

When a child is arrested under any charge, complaint, affidavit, or indictment, whether for a felony or a misdemeanor, such child shall be taken directly before the juvenile court. If the child is taken before a justice of the peace, mayor, judge of the police or municipal court, or judge of the court of common pleas other than a juvenile court, such justice of the peace, mayor, judge of the police or municipal court, or judge of the court of common pleas shall transfer the case to the juvenile court. The officers having such child in charge shall take him before the juvenile judge, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before him in the first instance. Upon such transfer or taking of such child before such judge, all further proceedings under the charge, complaint, information, or indictment shall be discontinued in the court of said justice of the peace, mayor, police or municipal judge, or judge of the court of common pleas other than a juvenile court, and the case relating to such child shall thenceforth be within the exclusive jurisdiction of the juvenile court and shall be deemed to be upon a complaint filed in such court as fully as if the appearance of such child had been upon a complaint filed in and a citation or warrant of arrest originally issued by such court.

§ 2151.26 Child charged with felony. (GC § 1639-32)

In any case involving a delinquent child under sections 2151.01 to 2151.54, inclusive, of the Revised Code, who has committed an act which could be a felony if committed by an adult, the juvenile judge, after full investigation and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person

qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety, subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in such sections in disposing of such case.

§ 2151.27 Complaint involving child. (GC § 1639-23)

Any person having knowledge of a child under eighteen years of age who appears to be delinquent, neglected, or dependent, or of a crippled or otherwise physically handicapped child under twenty-one years of age may, with respect to such delinquent, neglected, or dependent child, file a sworn complaint, and with respect to such crippled or otherwise physically handicapped child file an application for care in the juvenile court of the county in which such child has a residence or legal settlement, or in which such delinquency, neglect, or dependency occurred, or, in case of a crippled child, where such child is found. Such application or sworn complaint may be upon information and belief and shall be sufficiently definite by using the word delinquent, neglected, dependent, crippled, or physically handicapped, as the facts may be.

§ 2151.28 Citation of parties; hearing; subpoena. (GC § 1639-24)

After a complaint or an application for care has been filed under section 2151.27 of the Revised Code, and after such further investigation as the juvenile court directs, unless the parties voluntarily appear, the court shall issue a citation reciting briefly the substance of the complaint or application and requiring the parents, guardian, or the

persons who have the custody or control of the child, or with whom such child may be, to appear personally and bring the child before the court at the time and place stated. If the person cited is other than the parent or guardian of the child, then the parent or guardian, or both, shall also be notified of the pendency of the case and of the time and place of hearing.

Before any temporary commitment is made permanent, the court shall fix a time and place for hearing and shall cause notice thereof to be served upon the parent or guardian of the child, or published, as provided in section 2151.29 of the Revised Code.

Any person whose presence is considered necessary and who is not cited may be subpoenaed to appear and testify at the hearing. Any one cited or subpoenaed to appear who fails to do so may be punished, as in other cases in the court of common pleas, for contempt of court. Persons subpoenaed shall be paid the same witness fees as are allowed in the court of common pleas.

If it appears that the child is in such conditions or surroundings that his welfare requires that his custody be immediately assumed by the court, the juvenile judge may cause an order to be indorsed upon the citation that the officer serving the same shall take the child into custody at once.

§ 2151.29 Service of citations, notices, and subpoenas; publication of citation. (GC § 1639-25)

Services of the citations, notices, and subpoenas, prescribed by section 2151.28 of the Revised Code, shall be made by delivering a copy to the person cited, notified, or subpoenaed, or by leaving a copy at his usual place of residence; provided that if the juvenile judge is satisfied

that such service is impracticable, he may order service by registered mail.

Whenever it appears from affidavit that a parent, guardian, or other person having the custody of such child resides or has gone out of the state or that his place of residence is unknown so that such citation cannot be served on him, the clerk shall publish such citation once in a newspaper published in the county and of general circulation throughout the county, if there is one so published. The citation shall state the substance and the time and place of the hearing, which shall be held at least one week later than the date of the publication. A copy of such citation shall be sent by mail to the last known address of such parent, guardian, or other person having custody of such child, unless said affidavit shows that a reasonable effort has been made without success to ascertain such address. The certificate of the clerk that such publication has been made or such citation mailed shall be sufficient evidence thereof. When such period of one week from the time of publication has elapsed, the juvenile court shall have full jurisdiction to deal with such child as provided by sections 2151.01 to 2151.54, inclusive, of the Revised Code.

§ 2151.30 Issuance of warrant. (GC § 1639-26)

In any case when it is made to appear to the juvenile judge that the service of a citation under section 2151.29 of the Revised Code will be ineffectual or the welfare of the child requires that he be brought forthwith into the custody of the juvenile court, a warrant may be issued against the parent, custodian, or guardian, or against the child himself.

§ 2151.31 Custody of child pending hearing; child may be fingerprinted. (GC § 1639-27)

Whenever any officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the juvenile court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon such child may be released in the custody of a parent, guardian, or custodian. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or to the place of detention designated by the court, and the officer taking such child shall immediately notify the court with a written report of the condition or situation which caused the child to be brought in and shall file a complaint when directed to do so by the court.

In the case of any child whose custody has been assumed by the court, pending the final disposition of the case, the child may be released in the custody of a parent, guardian, or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released, such child, pending the hearing of the case, shall be detained in such place as shall be designated by the court, subject to further order.

This section does not forbid any peace officer, police officer, probation officer, or other person authorized by the juvenile judge from taking into custody any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals, or welfare. No child shall be fingerprinted or permitted to be fingerprinted or photographed by any officer or other person holding him in custody without the con-

sent of the judge. When the judge permits the fingerprinting of any child, the prints shall be taken on a civilian and not on a criminal card and shall be kept only in the civilian file. Provided that any child recognized to the court of common pleas, under section 2151.26 of the Revised Code, shall not be exempt from fingerprinting and photographing. In every such case the officer taking such child into custody shall immediately report the fact to the court and the case shall then proceed as provided in sections 2151.01 to 2151.54, inclusive, of the Revised Code.

§ 2151.32 Selection of custodian. (GC § 1639-33)

In placing a child under any guardianship or custody other than that of its parent, the juvenile court shall, when practicable, select a person or an institution or agency governed by persons of like religious faith as that of the parents of such child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertained, then of either of the parents.

§ 2151.33 Temporary care; emergency medical treatment; reimbursement. (GC § 1639-28)

Pending hearing of a complaint filed under section 2151.27 of the Revised Code and service of citations, the juvenile court may make such temporary disposition of any child as it deems best. Upon the certificate of one or more reputable practicing physicians, the court may summarily provide for emergency medical and surgical treatment which appears to be immediately necessary for any child concerning whom a complaint or an application for care has been filed, pending the service of a citation upon its parents, guardian, or custodian. The court may order the parents, guardian, or custodian, if found able to do so,

to reimburse the court for the expense involved in providing such emergency medical and surgical treatment, and any such person who disobeys such order may be adjudged in contempt of court and punished accordingly.

When such emergency medical and surgical treatment is furnished a child who is found at the hearing to be a nonresident of the county, and if the expense of such medical and surgical treatment cannot be recovered from the parents, legal guardian, or custodian of such child, the board of county commissioners of the county in which such child has a legal settlement shall reimburse the court for the reasonable cost of such emergency medical or surgical treatment out of its general fund.

§ 2151.34 Place of detention for children. (GC § 1639-22)

No child under eighteen years of age shall be placed in or committed to any prison, jail, or lockup, nor shall such child be brought into any police station, vehicle, or other place where such child can come in contact or communication with any adult convicted of crime or under arrest and charged with crime; provided that a child fourteen years of age or older may, for good cause shown, and with the consent of the juvenile judge or a person designated by him, be placed in a place of detention for adults, but in a room or ward separate from adults.

Upon the advice and recommendation of the judge, the board of county commissioners shall provide, by purchase, or lease, or otherwise, a place to be known as a detention home within a convenient distance of the juvenile court, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, or neglected children may be detained until final disposition. Such home shall be maintained as pro-

vided in sections 2151.01 to 2151.54, inclusive, of the Revised Code, or shall provide funds for the boarding of such children temporarily in private homes. Children who are alleged or adjudged delinquent, dependent, or neglected may, after complaint is filed, be detained in such detention home or certified foster homes until final disposition of their case. The court may arrange for the boarding of such children in certified foster homes or in uncertified foster homes for a period not exceeding sixty days, subject to the supervision of the court, or may arrange with any county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization to receive for temporary care children within the jurisdiction of the court.

In case a detention home is established as an agency of the court it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron. The judge may appoint a superintendent, a matron, and other necessary employees for such home and fix and pay their salaries in the same manner as is provided by section 2151.13 of the Revised Code for other employees of the court. The necessary expenses incurred in maintaining such detention home shall be paid by the county.

In case the court arranges for the board of children temporarily detained in such foster homes, or arranges for such board through any private certified organization, a reasonable sum to be fixed by the court for the board of such children shall be paid by the county. In order to have such foster homes available for service an agreed monthly subsidy may be paid and a fixed rate per day for care of children actually residing therein.

§ 2151.35 Informal hearing; disposition; school district to bear cost, which. (GC § 1639-30)

The juvenile court may conduct its hearings in an informal manner, and may adjourn such hearings from time to time. In the hearing of any case the general public may be excluded and only such persons admitted as have a direct interest in the case. All cases involving children shall be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving neglected, dependent, or crippled children. The court shall hear and determine all cases of children without a jury. If the court finds that the child is delinquent, neglected, or dependent, it may by order entered proceed as follows:

(A) Place the child on probation, under supervision in its own home, in the custody of a relative, in an institution, or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided that the court may place delinquent children on a free or wage basis in uncertified foster homes. The court shall, at the time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs. The decision of the court concerning the expense of the child's education shall be made a part of the order provided by this section;

(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;

(C) Impose a fine upon a delinquent child not exceeding twenty-five dollars or costs, or both, if in the judgment of the juvenile judge it is for the best interests of such child;

(D) Make such further disposition as the court deems to be for the best interest of the child;

(E) Commit a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony to the Ohio state reformatory.

Whenever a child commits an act of delinquency before arriving at the age of eighteen years, and the specific complaint thereon is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, as if the complaint were filed and hearing held before such child arrived at the age of eighteen years, provided that no child over eighteen years of age at the time of the court hearing may be committed to the boys' or girls' industrial schools.

The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 2151.26 of the Revised Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application.

Whenever a court commits a child to the division of social administration, the department of public welfare, or to any department, board, institution or agency it shall transmit with the order of commitment an adequate case history of the child and its family.

With respect to a crippled or otherwise physically handicapped child, who is neither delinquent, neglected, nor dependent, the court may commit the child temporarily to the division or to any agency in Ohio authorized and qualified to provide or secure the care, treatment, or placement required in the particular case.

§ 2151.36 Expenses of children committed; expenses of nonresidents. (GC § 1639-34)

When a child has been committed as provided by sections 2151.01 to 2151.54, inclusive, of the Revised Code, the juvenile court may make an examination regarding the income of the parents, guardian, or person charged with such child's support, and may then order that such parent, guardian, or person pay for the care, maintenance, and education of such child and for expenses involved in providing orthopedic, medical or surgical treatment, or special care of such child. The court may enter judgment for the money due and enforce such judgment by execution as in the court of common pleas. Provided that whenever a child which has a legal settlement in another county comes within the jurisdiction of the court, the court may certify such case to the juvenile court of the county of legal settlement for further proceedings, and such court shall thereafter proceed as if the original complaint had been filed in said court.

Any expenses incurred for the care, support, maintenance, education, medical or surgical treatment, special care of a child, which has a legal settlement in another

county, shall be at the expense of the county of legal settlement, if the consent of the juvenile judge of the county of legal settlement is first obtained. When such consent is obtained, the board of county commissioners of the county in which such child has a legal settlement shall reimburse the committing court for such expense out of its general fund. If the department of public welfare deems it to be in the best interest of any delinquent, dependent, or neglected child which has a legal settlement in a foreign state or country, that such child be returned to the state or county of legal settlement, such child may be committed to the department for such return.

Any expense ordered by the court for the care, maintenance, and education of dependent, neglected, or delinquent children, or for orthopedic, medical or surgical treatment, or special care of such children under sections 2151.01 to 2151.54, inclusive, of the Revised Code, except such part thereof as may be paid by the state or federal government, shall be paid from the county treasury upon specifically itemized vouchers, certified to by the judge. The court shall not be responsible for any expense resulting from the commitment of children to any home, county department of welfare which has assumed the administration of child welfare, county child welfare board, certified organization, or other institution, association, or agency, unless such expense has been authorized by the court at the time of commitment.

§ 2151.37 Institution receiving children required to make report. (GC § 1639-36)

At any time the juvenile judge may require from an association receiving or desiring to receive children, such reports, information, and statements as he deems necessary. He may at any time require from an association or

institution reports, information, or statements concerning any child committed to it by such judge under sections 2151.01 to 2151.54, inclusive, of the Revised Code.

§ 2151.38 When jurisdiction of court ceases; exception. (GC § 1639-35)

When a child is committed to the boys' or girls' industrial school, or to the Ohio state reformatory, or to the permanent custody of the department of public welfare, or to the division of social administration in said department, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, the order shall state that such commitment is permanent and the jurisdiction of the juvenile court in respect to the child so committed shall cease and terminate at the time of commitment; except that if the division of any county department, board, or certified organization having such permanent custody makes application to the court for the termination of such custody, the court upon such application, after notice and hearing and for good cause shown may terminate such custody at any time prior to the child becoming of age. The court shall make disposition of the matter in whatever manner will serve the best interests of the child. All other commitments made by the court shall be temporary and shall continue for such period as designated by the court in its order, or until terminated or modified by the court, or until a child attains the age of twenty-one years.

§ 2151.39 Children from other states placed in family homes. (GC § 1639-37)

No person or association of another state, incorporated or otherwise, shall place a child in a family home

within the boundaries of this state, either with or without indenture for adoption, unless such person or association has furnished the department of public welfare with such guaranty as it may require that no child having a contagious disease, deformity, feeble mind, or vicious character, shall be brought into this state by such person or association or its agents, and that such person or association will promptly receive and remove from the state a child brought into the state by such person or association or its agents, which becomes a public charge within five years thereafter.

§ 2151.40 Co-operation required. (GC § 1639-55)

Every county, township, or municipal official or department, including the prosecuting attorney, shall render all assistance and co-operation within his jurisdictional power which may further the objects of section 2151.01 to 2151.54, inclusive, of the Revised Code. All institutions or agencies to which the juvenile court sends any child shall give to the court or to any officer appointed by it such information concerning such child as said court or officer requires. The court may seek the co-operation of all societies or organizations having for their object the protection or aid of children.

§ 2151.41 Prohibition against abuse of or abetting delinquency of child. (GC § 1639.45)

No person shall abuse a child or aid, abet, induce, cause, encourage, or contribute to the dependency, neglect, or delinquency of a child or a ward of the juvenile court, or act in a way tending to cause delinquency in such child. No person shall aid, abet, induce, cause, or encourage a child or a ward of the court, committed to the custody of any person, department, public or private institution, to

leave the custody of such person, department, public or private institution, without legal consent. Each day of such contribution to such dependency, neglect, or delinquency is a separate offense.

§ 2151.42 Prohibition against neglecting or mistreating child. (GC § 1639-46)

No person charged with the care, support, maintenance, or education of a legitimate or illegitimate child under eighteen years of age shall fail to care for, support, maintain, or educate such child, or shall abandon such child, or shall beat, neglect, injure, or otherwise ill-treat such child, or cause or allow him to engage in common begging. No person charged with the care, support, maintenance, or education of a legitimate or illegitimate child under twenty-one years of age who is physically or mentally handicapped shall fail to care for, support, maintain, or educate such child. Such neglect, nonsupport, or abandonment shall be deemed to have been committed in the county in which such child may be at the time of such neglect, nonsupport, or abandonment. Each day of such failure, neglect, or refusal shall constitute a separate offense.

§ 2151.43 Charges against adults; defendant bound over to grand jury. (GC § 1639-39)

In cases against an adult under sections 2151.01 to 2151.54, inclusive, of the Revised Code, any person may file an affidavit with the clerk of the juvenile court setting forth briefly, in plain and ordinary language, the charges against the accused who shall be tried thereon. In such prosecution an indictment by the grand jury on information by the prosecuting attorney shall not be required.

The clerk shall issue a warrant for the arrest of the accused, who, when arrested, shall be taken before the juvenile judge and tried according to such sections.

The affidavit may be amended at any time before or during the trial.

The judge may bind such adult over to the grand jury, where the act complained of constitutes a felony.

§ 2151.44 Complaint after hearing. (GC §§ 1639-40, 1639-42)

If it appears at the hearing of a child that any person has abused or has aided, induced, caused, encouraged, or contributed to the dependency, neglect, or delinquency of a child or acted in a way tending to cause delinquency in such child, or that a person charged with the care, support, education, or maintenance of any child has failed to support or sufficiently contribute toward the support, education, and maintenance of such child, the juvenile judge may order a complaint filed against such person and proceed to hear and dispose of the case as provided in sections 2151.01 to 2151.54, inclusive, of the Revised Code.

On the request of the judge, the prosecuting attorney shall prosecute all adults charged with violating such sections.

§ 2151.45 Expense of extradition. (GC § 1639.41)

When a person charged with the violation of sections 2151.01 to 2151.54, inclusive, of the Revised Code, has fled to another state or territory, and the governor has issued a requisition for such person, the board of county commissioners shall pay from the general expense fund of the county to the agent designated in such requisition

all necessary expenses incurred in pursuing and returning such prisoner.

§ 2151.46 Bail. (GC § 1639-43)

Sections 2937.21 to 2937.45, inclusive, of the Revised Code, relating to bail in criminal cases in the court of common pleas, shall apply to adults committed or held under sections 2151.01 to 2151.54, inclusive, of the Revised Code.

§ 2151.47 Jury trial; procedure. (GC § 1639-44)

Any adult arrested under sections 2151.01 to 2151.54, inclusive, of the Revised Code, at any time before hearing, may demand a trial by jury, or the juvenile judge upon his own motion may call a jury. Sections 2945.17, and 2945.22 to 2945.36, inclusive, of the Revised Code, relating to the drawing and impaneling of jurors in criminal cases in the court of common pleas, other than in capital cases, shall apply to such jury trial. The compensation of jurors and costs of the clerk and sheriff shall be taxed and paid as in criminal cases in the court of common pleas.

§ 2151.48 Commitment to women's reformatory in lieu of jail or workhouse. (GC § 1639-48)

When any female over the age of eighteen years is found guilty of a misdemeanor under sections 2151.01 to 2151.54, inclusive, of the Revised Code, the juvenile judge may order such female confined to the women's reformatory at Marysville for the same term for which said female could be committed to a workhouse or jail.

§ 2151.49 Suspension of sentence. (GC § 1639-49)

In every case of conviction under sections 2151.01 to 2151.54, inclusive, of the Revised Code, where imprisonment is imposed as part of the punishment, the juvenile judge may suspend sentence, before or during commitment, upon such condition as he imposes.

§ 2151.50 Forfeiture of bond. (GC § 1639-50)

When, as a condition of suspension of sentence under section 2151.49 of the Revised Code, bond is required and given, upon the failure of a person giving such bond to comply with the conditions thereof, such bond may be forfeited, the suspension terminated by the juvenile judge, the original sentence executed as though it had not been suspended, and the term of any sentence imposed in such case shall commence from the date of imprisonment of such person after such forfeiture and termination of suspension. Any part of such sentence which may have been served shall be deducted from any such period of imprisonment. When such bond is forfeited the judge may issue execution thereon without further proceedings.

§ 2151.51 Provision for dependent children of person sentenced to workhouse or jail. (GC § 1639-47)

When an adult is sentenced to imprisonment for any violation of sections 2151.42 of the Revised Code, the county from which such person is sentenced, on the order of the juvenile judge, shall pay from the general revenue fund fifty cents for each day such prisoner is confined to the juvenile court of such county, for the maintenance of the dependent children of such prisoner. Such expenditure shall be made under the direction of the judge, who shall designate an employee for such purpose. The board

of county commissioners of such county shall make an appropriation for such cases, and allowances therefrom shall be paid from the county treasury upon the warrant of the county auditor.

§ 2151.52 Appeals. (GC § 1639-51)

The sections of the Revised Code relating to appeals on questions of law from the court of common pleas, including the allowance and signing of bills of exceptions, shall apply to prosecutions of adults under sections 2151.01 to 2151.54, inclusive, of the Revised Code, and from such prosecutions an appeal on a question of law may be taken to the court of appeals of the county under laws governing appeals in other criminal cases to such court of appeals. An appeal shall not be taken to the court of appeals except upon good cause shown, upon motion and notice to the prosecuting attorney, as in civil cases, or unless such motion is allowed by such court.

§ 2151.53 Physical and mental examinations; records of examination; expenses. (GC § 1639-54)

Any person coming within sections 2151.01 to 2151.54, inclusive, of the Revised Code, may be subjected to a physical and mental examination by competent physicians, psychologists, and psychiatrists to be appointed by the juvenile court. Whenever any child is committed to any institution by virtue of such sections, a record of such examinations shall be sent with the commitment to such institution. The compensation of such physicians, psychologists, and psychiatrists and the expenses of such examinations shall be paid by the county treasurer upon specifically itemized vouchers, certified by the juvenile judge.

§ 2151.54 Fees and costs. (GC § 1639-56)

The juvenile court shall tax and collect the same fees and costs in adult cases as are allowed the clerk of the court of common pleas for similar services. No fees or costs shall be taxed in cases of delinquent, dependent, or neglected children other than those authorized by section 2151.35 of the Revised Code. The expense of transportation of children to places to which they have been committed, and the transportation of children to and from another state by police or other officers, acting upon order of the court, shall be paid from the county treasury upon specifically itemized vouchers certified to by the judge.

§ 2151.55 Purpose and construction. (GC § 1639-59)

The purpose of sections 2151.01 to 2151.54, inclusive, of the Revised Code, is to secure for each child under the jurisdiction of the juvenile court such care, guidance, and control, preferably in its own home, as will best serve the child's welfare. When such child is removed from its own family, it is the intent to secure for such child, custody, care, and discipline, as nearly as possible equivalent to that which should have been given by its parents. The principle is hereby recognized that children under the jurisdiction of the juvenile court are wards of such court, subject to the discipline and entitled to the protection of such court, which may intervene to safeguard them from neglect or injury, and to enforce the legal obligations due to them. To this end such sections shall be liberally construed.

§ 2151.99 Penalties.

(A) Whoever violates section 2151.41 of the Revised Code shall be fined not less than five nor more than one thousand dollars or imprisoned not less than ten days nor more than one year, or both.

(B) Whoever violates section 2151.42 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than one year, or both. The juvenile judge may order that such person stand committed until such fines and costs are paid; provided that if he pays promptly to the juvenile court each week or to a trustee named by such court a sum to be fixed by it for such purpose, sentence may be suspended.

EXCERPTS FROM RECORD.

Q. Doctor, did you become acquainted with one Jeffrey Fischer?

A. Yes, I did.

Q. You may look at your records to refresh your recollection. Will you tell us when you first saw Jeffrey?

A. I saw Jeffrey in December 2, 1962.

Q. You may look at your records. Do you have your records to refresh your recollection?

A. Yes.

Q. Looking at your records, Doctor, would you tell us again, was that December 2, 1962?

A. December 2, 1962.

Q. Who did you get the history from, the mother of the child?

A. I got the history from both the parents and some information from Jeff.

Q. Tell us what that history was as recited to you by the parents and Jeffrey. Now, Doctor, I must ask you this question first: Do you have any objection at all of Jeffrey sitting in the Courtroom while you are testifying?

A. No.

Q. Do you wish him to remain or have him outside? You are still treating him?

A. Yes, I am.

Q. Do you prefer him outside?

A. It's all right with me if Jeff wants to remain.

Q. You then have no objection?

A. No.

Q. Will you tell us what the history was?

A. The history was under achieving in school, history of failure in at least one subject, compulsive type of behavior is the word used to describe the type of behavior, repeated action of thought which brings in excessive types of thinking.

Q. Doctor, would you go a little slower. I would like you to go slower and talk a little more loudly than you would in your own office. Please repeat what you said when you started about Jeffrey Fischer.

A. You were asking about the reasons for the referral.

Q. I was asking about history.

A. That he was under achieving at school, usually be one subject that was failed. It was hard for Jeff to spend too much time with his studies. He would be described as compulsive behavior in relation to talks about the weather. He was preoccupied with thoughts about the weather and having to spend a good deal of time making out weather information cases and predictions.

There was also, in relation to problems with his studying and so forth, some provocation between he and his

parents about their wish for him to do this study and difficulty just had in doing them. This was a difficulty.

He also was a boy who felt uncomfortable in new situations and with new people. It was hard for him to establish long, permanent, types of relationships with other children. However, he has always been a good athlete and acceptable member of any team he has been on.

Those were essentially the main things.

Q. Did you get any history of his previous experiences as to health?

A. There is a long history of illness of Jeff.

Q. What is that history?

A. A great deal of intestinal tract problems with history of bloody stools, diarrhea, colicy type pain, vomiting. He had numerous hospitalizations early in life which is a serious matter both physically and for a child. I have noted here he has six hospitalizations in his first five years and at age seven he had poliomyelitis which was a paralytic type and was in the hospital, of course, and then out of school for about six months. There wasn't any residual to the polio; he made a complete recovery.

Q. Any further history, Doctor, that you obtained from the parents or from Jeffrey prior to your first examination?

A. Prior to?

Q. Prior to your first examination in December of 1962 or during other examinations, any further history, history prior to your treating him. Is that about it or are there any other facts?

A. Well, I don't think any particularly important facts. There is a lot of history about development or things important to us, if you want this type of thing.

Q. You did examine Jeffrey?

A. Yes.

Q. What did you find on examination? What was your finding with respect to Jeffrey? What were his problems?.

A. My finding was that Jeffrey was a boy who had these preoccupations with the weather. They were of obsession quality and he had a need to predict the weather, because it was the kind of thing that helped him feel as though he was in control of the situation and made him more comfortable if he was able to make a prediction of what was going to be. It is the things that are not predictable that are difficult in this situation.

Q. Was there a need in him at this time to be able to control something?

A. To condition himself into control, which is a very typical adolescent need, but, with Jeff this was always perhaps more so than—it was more so than the average adolescent and part of a neurotic structure.

Q. Did he think he could make weather?

A. No.

Q. How did he have control of the weather?

A. The point is this: He felt he had control if he could predict it. This is not unusual in defense of somebody that has a need to control. If he can predict, he feels in better control over it. This is the basis we worked with in preparing children for procedures, or other types of things to know what is going to happen. It makes a person feel like they are in better control of themselves and better control in general.

Q. Were there any hostilities expressed at that time to his mother or father?

A. Jeffrey has a problem with hostilities. He is a boy who feels very uncomfortable with angry feelings and has a need, because of this, to not allow these feelings to be present within his own thinking and when these types

of feelings threaten to become known to him, it creates a great deal of anxiety within him and he will take defensive measures to avoid the feelings, to avoid the anxiety. [R. 390-394.]

* * * * *

Q. About how long was it after the mother and father had been in the listening room did you go back and take the [fire] chief into the listening room? A. Five minutes, eight minutes, 10 minutes. I turned on the monitoring equipment and this is a two-way mirror you may look through and the room was in darkness, and I looked and the fire chief wasn't there and I thought he ought to be here. I went out and brought him in. [R. 2164.]

* * * * *

Q. Where was that?

A. That was in Shaker Heights Police Station.

Q. And who was present in the room within a distance capable to hear the conversation beside yourself and this boy?

At the time that I talked to him regarding the fires, interrogating him in regard to the fires, it was unaware to me that we were under observation or being viewed, but after the interview, I then learned that Mr. and Mrs. Fischer and also Fire Chief Benjamin had been viewing the entire investigation. [R. 298.]

* * * * *

Q. Actually, after your October investigation you quit your investigating? I take it this case no longer was brought to your attention?

A. Yes. We had no leads to extend any further investigation.

Q. You were through in October and you haven't taken up the investigation since October, 1963; is that correct?

A. We couldn't develop anything further.

Q. You yourself?

A. That is correct.

Q. As of October, 1963, you have not solved the problem of who started the fires beyond the October fires; correct?

A. That is correct. [R. 304.]

* * * * *

Q. Jeffrey, you are under oath; you know that?

A. That's right.

Q. In this room, you have sworn to tell the truth. You know the seriousness of not telling the truth?

A. Yes. That's right.

Q. You are conscious of this? You know you are under oath and it is as serious to tell a lie on that witness stand about this subject as it is if fires were started by you. You know it is just as serious to start a fire as it is to tell a lie; do you know that? You are sure you understand that?

A. Yes.

Q. I am asking you now under oath again: Did you cause any of these fires that were set?

A. I had nothing to do with any of them.

Q. Are you absolutely sure?

A. Yes. [R. 2377.]

* * * * *

The Court: Mr. Sindell is objecting to the admissibility of this alleged confession * * * [R. 300.]

LETTER, DECEMBER 7, 1966, DAVID I. SINDELL TO CHIEF JUSTICE KINGSLEY A. TAFT.

December 7th, 1966

Chief Justice Kingsley A. Taft
Ohio Supreme Court
State House Annex
Columbus, Ohio 43216

In the Matter of Jeffrey Fischer, a Minor
Case No. 27318
Motion to certify argued December 6th, 1966

Dear Justice Taft:

This morning we discovered, by the enclosed New York Times article, that on the same day that we were arguing a Motion to Certify before the Supreme Court of Ohio, exact questions were being argued in the Supreme Court of the United States.

Because the Supreme Court of the United States, in the Gault case, will decide issues of constitutional law which are before the Supreme Court of Ohio in the above captioned case, we respectfully request that your decision on the Motion to Certify be postponed until the Supreme Court of the United States renders its decision.

Sincerely yours,

DAVID I. SINDELL,
Counsel for Jeffrey Fischer, Appellant

DIS:CP
Encl.
CC: John T. Corrigan, Prosecutor
for Cuyahoga County
Frederick W. Frey, Asst. County
Prosecutor

Amendment V.

Rights of Persons

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI.

Rights of Accused

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment XIV.

Rights of Citizens

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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FILED
JUL 2 1957
JOHN T. CORRIGAN

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 229

In the Matter of
JEFFREY FISCHER,
a minor.

ALTERNATIVE MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT OF LOWER COURT.

JOHN T. CORRIGAN,
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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. _____.

In the Matter of
JEFFREY FISCHER,
a minor.

ALTERNATIVE MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT OF LOWER COURT.

I. ALTERNATIVE MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT OF LOWER COURT.

The State of Ohio, appellee herein, moves in the alternative that this appeal be dismissed or that the judgment of the lower Court be affirmed by this Court on the following grounds:

1. That the appeal does not present a substantial federal question.
2. That it is manifest that the questions on which the appeal of the cause depends are so unsubstantial as not to need further argument.

II. APPELLANT'S STATEMENT AS TO JURISDICTION.

This statement in appellant's brief is erroneous in that it states that Jeffrey Fischer was "sentenced" to "*indefinite*" commitment to The Ohio Youth Commission. At the time this case was concluded in the Juvenile Court Jeffrey Fischer was 18 years of age. He was not

found by the fireman in charge of putting out the fire just where Jeffrey had said it was. Mr. Shapiro also confirmed the fact that this box of cancelled checks was where Jeffrey said it was (R. 83, 84). The fireman also confirmed the evidence as to the box of cancelled checks (R. 94, 95). (See also R. 91 and R. 1257.) Jeffrey was at home when both these fires were *discovered*. He had just returned.

(3) *Sheber Fire*: 2624 Milton Road, at about 10 p.m. on July 23rd, 1964, Jeffrey said he threw a lighted match on a desk in the garage that had some papers on it (R. 319). The remains of a desk were found in the garage after the fire. Also charred paper. At the time of the Sheber fire, Jeffrey had just returned from taking a friend, Alan Richman, home. Jeffrey testified that he told Detective Carr that he started this Sheber fire with a cigarette lighter and a stick of wood. This, Detective Carr flatly denies (R. 359). Also R. 1199, 1200 and 1260. Fireman Pflueger who had charge of putting out this fire said the charred desk was found after the fire and that in his opinion that was where the fire started (R. 194, 195).

(4) *Fischer Fire*: 2620 Milton Road, July 30th, 1964 at about 10:40 p.m. Jeffrey said he was home and 'snuck' downstairs (R. 319, 320) and out the side door and threw a lighted match into a carton or can of old clothes. In his confession Jeffrey said he started the Fischer fire to take suspicion off himself (R. 234). This receptacle of charred old clothes was found in the Fischer garage after the fire was put out where Jeffrey said it was. Just before this fire started Mrs. Fischer was preparing refreshments for guests named Brahms, who strangely were never called to testify for Fischers, though available for testimony. Mrs. Fischer did not see the fire in their garage till it was well advanced. Mr. and Mrs. Fischer made conflicting

statements as to curtains being drawn over the rear windows. It was impossible for Mrs. Fischer to have been watching Jeffrey every minute that night. It would only have taken Jeffrey about two minutes to start this fire and get back into the house. Lieutenant Joseph Duffy of University Heights Fire Department attended the Fischer fire. He testified that it was a "started" fire originating in rubbish containers (3) (R. 265 to 270). See also testimony of Fire Chief Benjamin (R. 264 to 270). See especially R. 235.

All of the firemen and fire experts who examined these garages testified that all of these garage fires were "set fires" and not accidents. See R. 2055, 2074, 2077, 2078 and 2081. The defendant has no evidence from any expert that materially conflicts with this testimony. See R. 301 to 318.

The details of the starting of these fires and the materials with which they were started as described by Jeffrey Fischer were found by police, firemen, fire experts and garage owners immediately after each of said fires. The following witnesses gave very clear testimony that all of the concerned fires were "set fires" *and* as to how they were started.

Paul Shapiro (garage owner) (R. 83);
Richard Lotz (fireman) (R. 95, 96);
Frances Sheber (garage owner) (R. 128, 144, 145, 146);
J. G. Pflueger (fireman) (R. 193, 195, 220, 222);
Detective Ralph Schaar (police) (R. 232 to 256);
Detective Joseph Duffy (police) (R. 264, 280);
Sgt. Philip Carr (police) (R. 287 to 387);
Policeman Donald Stehlick (R. 484, 485, 486, 501, 502);
Fire expert Merle Mitton (R. 532, 540, 584);

Carl B. Tinkham, Asst. Ohio Fire Marshal (R. 587, 629, 630, 637);

Fire Chief Benjamin of University Heights (R. 630, 666, 667, 669, 670, 671).

These witnesses corroborated in detail the facts stated by Jeffrey Fischer in his voluntary confession to Detective Carr.

IV. THE STATEMENT AS TO JURISDICTION MADE BY THE APPELLANT.

Appellant states that Jeffrey Fischer was sentenced to "*indefinite* commitment to the Ohio Youth Commission." This is *not* true because, when ordered committed to said Youth Commission, Jeffrey was 18 years old. Under the laws of Ohio the order of a Juvenile Court involving a juvenile expires when the juvenile becomes 21 years of age and is no longer a juvenile. The Ohio Youth Commission is essentially a rehabilitational institution, not criminal. See Ohio Revised Code Secs. 5139.01, 5139.03, 5139.05, 5139.06. There is no permanent commitment to The Ohio Youth Commission. The Juvenile Court had proper jurisdiction to try this case. Ohio Revised Code Secs. 2153.16, 2151.21, 2151.27.

V. QUESTIONS PRESENTED BY APPELLANT.

Was Jeffrey Fischer deprived of his Constitutional rights because he made a detailed confession to policeman Carr (after a lie detector test) which was admitted in evidence when the minor:

1. Was not represented by counsel.
2. Was not advised of his right to have counsel.
3. Was not advised of his right to remain silent.

4. Was not advised of his right against self-incrimination.

When the police investigated these garage fires they talked to every child and young person in the neighborhood as the evidence clearly shows and their suspicion centered on Jeffrey Fischer alone. The police went to the Fischer home and asked to talk to Jeffrey at the police station. Jeffrey and his parents consented voluntarily. The conference was had but Jeffrey was very evasive. His mother was there. This was done a second time after consent of Jeffrey and his mother. This time also Jeffrey was very evasive. His mother was not there, but she brought him there. On both occasions the police were very good and gentle with Jeffrey as he admits. After the second talk with Jeffrey the police went to Fischer's house and talked to both his parents and Jeffrey. They all agreed in writing to allow Jeffrey to take a lie detector test. It was given with parents present in the building, but it produced no results as Jeffrey was very evasive. Then the police again went to Fischer's house and procured from Mr. and Mrs. Fischer and Jeffrey the written consent to the second lie detector test. In all these conferences the police were most kind and gentlemanly with all the Fischers as the evidence *clearly* shows. At the last lie detector test it appeared that Jeffrey did start these garage fires, but neither Jeffrey nor his parents were told of that fact. At the close of the last lie detector test Detective Schaar said kindly to Jeffrey that if he did start these fires he should admit it and get it off his conscience so it wouldn't continue to bother him. *Then Jeffrey told Detective Schaar that he did start these fires.* Schaar questioned Jeffrey no further but called in policeman Carr. Before Carr questioned Jeffrey, Mr. and Mrs. Fischer and Fire Chief Benjamin went into an observation room next to the question-

ing room where they could see into the questioning room and hear the questioning, but could not be seen from the questioning room. *After the parents were in the observation room Carr questioned Jeffrey most kindly and Jeffrey confessed in detail as to each of the concerned garage fires.* Jeffrey and Jeffrey's parents also consented to policeman Carr's questioning of Jeffrey. The questioning by Carr lasted only half an hour or less.

When Carr's questioning was over Mr. and Mrs. Fischer came into the room and complimented Carr about being so kind to Jeffrey. Carr asked for a written statement from Jeffrey but the parents refused it. *The parents took Jeffrey on a trip to New York and en route Mrs. Fischer telephoned Carr and again complimented him on his treatment of Jeffrey during the confession interview.* Jeffrey's detailed confession is supported and corroborated in detail by the ten witnesses hereinbefore mentioned whose testimony is in the record. *No force, threats or undue pressure of any kind were used on Jeffrey to obtain his confession; and since his confession is corroborated in detail by ten (10) reliable witnesses as to details of fire setting, how can there be any reasonable doubt of the fact that Jeffrey did start these fires? Moreover, in this case the Fischers were most fortunate indeed that Juvenile Judge Whitlach did not refer this case to the grand jury and Common Pleas Court as a felony, which he had a legal right to do under Ohio Revised Code, Sec. 2151.26.* What Jeffrey did is no petty act of juvenile delinquency.

We now come to the specifics of the questions presented by appellant on page 3 of appellant's brief. Appellant contends that:

1. Jeffrey "*was not represented by counsel.*"

2. "Was not advised of his rights to have counsel."

Jeffrey was respresented by counsel *before* and *during* trial and in all subsequent proceedings. As every one knows a minor living with his parents is legally in their custody. In this case the police had the *full consent* of the parents *and* Jeffrey before *every* questioning of Jeffrey, and the parents complimented the concerned police on their fine treatment of Jeffrey. These parents could have had counsel at any time, but whether the police told them so or not does not destroy their consent, and Jeffrey's, to the concerned questioning. *As it was they knew enough to get legal counsel before trial and did so.* Jeffrey testified that he and his parents talked this whole matter over *with counsel before* trial. Thereafter all the Fischers denied what Jeffrey had voluntarily admitted. Jeffrey's parents are intelligent, educated people and Mr. Fischer has a very good business. *In his confession Jeffrey told policeman Carr that he "hated" his parents because they were too dominating and restrictive; that he couldn't leave the house without their permission.* Mrs. Fischer is a very dominant person. During the trial of this case she tried to influence witnesses on both sides of the case by shaking and nodding her head at them to get answers that she wanted. This was repeatedly objected to by the State and the Court ordered her to stop it, but she did not do so.

This case is truly in all respects a civil case, by statute, in Ohio, despite the fact that it could have been a criminal case. There is no duty as to counsel in a civil case such as obtains in a criminal case. *No court has any right to infringe upon the proper rights and powers of legislatures. Even aside from the Ohio statutes, this is purely a civil case. No such Constitutional rights as those contended for by appellant apply to civil cases.* A mere factual examination of this case shows no undue risk or maltreatment of appellant in any way. In fact never

have we seen a case where a juvenile and his parents have been more carefully and kindly dealt with than in this case. *The Juvenile Court in this case gave no indefinite judgment and there was no "sentence" to any penal institution, nor was there even any penal restriction.* Children assigned to the Ohio Youth Commission go to public schools, have medical and psychiatric treatment, engage in athletics and have entertainment. They may be visited by their families and friends frequently. If they are incorrigible some other disposition may be made of them but if they act reasonably they stay there until released by becoming of age or by order of the Commission. See Ohio Revised Code Secs. 5139.14, 5139.15 and following sections.

This case shows no illegal or undue restraint or restriction or any unfairness. It clearly shows that these parents and Jeffrey were very fortunate indeed to receive such kind, fair treatment. But this means nothing to them now. *Jeffrey repeatedly exercised his right to refrain from admitting his guilt until he voluntarily confessed with his parents watching him. He did not confess until he decided to do so.* No one did anything to impair or stop the exercise of his constitutional rights.

5. *"That Jeffrey had been under psychiatric treatment for more than one year prior to the confession, his illness consisting of guilt feelings for acts he did not commit."*

This statement is not a fact. No psychiatrist testified as above stated. If Jeffrey was under any pressure before he confessed it was caused *only* by *his* natural *factual guilt feeling.* Whether police are present or not, if a confession is voluntary and true and there is no improper concealment, pressure, threats or violence, then such confession is proper and must stand. To hold otherwise is to uphold

and favor wrongdoing and unduly and improperly restrict government in its protection of its citizens and proper standards of living.

The defense in this case had produced no evidence worth mentioning in support of its side of this case. For example, of all of the defense witnesses in this case there were 30 of which *not one* gave *any* testimony for defense that involved *any* issue or material facts in this case. Only their psychiatrist and the Fischer family gave any really pertinent testimony. Their phychiatrist, Dr. Woldman, repeatedly said that psychiatrists can easily be wrong and there is no assurance as to how a person will act under repeated circumstances; that there are times when psychiatrists cannot get all the information in a patient's mind; that if Jeffrey gave details of these fires that are backed up by corroborative evidence "sure it is possible that he started those fires"; that people tend to repeat offenses they commit and that many people who do wrong find relief in confession (R. pp. 423 to 452). Dr. Woldman was a defense witness and is Jeffrey's psychiatrist. Two other state psychiatrist witnesses testified substantially the same. *These psychiatrists never said that Jeffrey did or would testify to anything "because of guilt feelings as to things he did not do."*

6. *"Testified that his confession was not truthful and was not given voluntarily."*

All the evidence in this case except that of Jeffrey and his parents is contrary to this above quoted statement. If Jeffrey's confession were not true how could it be supported in detail by eleven witnesses, some of whom are experts in determining the cause of fires? *Moreover these witnesses saw the concerned garages right after the fires and found in each of the garages the combustible material that Jeffrey said he started the fires with, and found it in*

that part of each garage where Jeffrey said it was. There is no doubt that true feelings of guilt pressure caused Jeffrey to confess.

7. *"There was no other evidence against appellant except the alleged confession."*

The record specifically shows the contrary as above explained. Eleven witnesses for the appellee gave specifically corroborative evidence supporting Jeffrey's confession.

VI. THE LAW APPLICABLE TO THIS CASE.

It is *not* true that "Jeffrey's illness was that of immense guilt for things he did *not* do and things over which he had no control" and the testimony quoted on page 54 of appellant's "statement as to jurisdiction" does *not* so state. *No psychiatrist ever gave any such testimony in this case.* Appellant's parents obviously made Jeffrey deny his confession, which was wholly voluntary when made with parents' consent. Applicant had legal counsel for some time before the trial started. It is completely untrue that, as appellant says, "there was no other evidence against appellant other than his confession." It is not true that appellant has been sentenced "indefinitely" to The Ohio Youth Commission. Appellant is now 19 years old or very close to it.

In the *Gault* case* there was a verbal complaint that the juvenile, age 15 years, had made lewd telephone calls. The boy was picked up without consulting, or notifying his parents and put in a detention home. A petition against the boy was filed in Court which made no reference to facts charged but stated only that the boy was a delinquent. There was an affidavit with the petition. On the

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* *In the Matter of Gerald Francis Gault, a minor*, 35 U. S. Law Week 4399.

same day the police and the boy (without parents) appeared before the Juvenile Court. Gerald was questioned and a police officer testified. Gerald confessed to part of the charges. Then a second hearing was had at which Gerald's parents were present, but not the complainant. The Judge committed Gerald to the state industrial school until he was 21 years old. The case was appealed and the judgment reversed by this Court.

In its opinion this Court said:

> "We do not even consider the entire process relating to juvenile delinquents. For example we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post adjudicative or dispositional process."

It is therefore indisputable that the decision in the *Gault* case applies only to proceedings before the Juvenile Court and *not* to any prior matters, such as police action, before trial. Only a Court can determine or decide whether or not a juvenile is a delinquent. This Fischer case involves matters that happened before and during trial.

After making the above quoted statement in the *Gault* case, the United States Supreme Court then proceeded to decide the appeal on the following four principal grounds:

1. "* * * that the assistance of counsel is essential for purposes of waiver proceedings, so we hold now that it is equally essential for the awesome prospect of incarceration in a state institution until the juvenile reaches the age of 21."

In the Fischer case the appellant has had full benefit of counsel for some time before trial, all the time during trial and ever since trial was concluded. Before and when

Jeffrey Fischer confessed, all his examinations had the full notification and express consent of his parents and himself. His parents were at all times his legal custodians. He was in *no* way abused, threatened, misled or taken advantage of. The police were unusually kind to him and very careful. They were thanked therefor by his parents. The record contains no timely objection to the admission of Jeffrey's confession in evidence. He was allowed to and did exercise his right to refuse to confess until he voluntarily did so.

2. *"We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel the counsel will be appointed to represent the child."*

This ruling has no bearing whatever on the Fischer case because said juvenile had legal counsel before the trial, at the trial and has had legal counsel ever since the trial. Moreover at trial he was confronted with all the appellee's witnesses and they were all cross-examined by appellant's counsel.

3. *"Before being interviewed the child and his parents should be informed of his right to have legal counsel present and to refuse to answer questions or be fingerprinted if he should so desire."*

Since this Court has stated that the *Gault* opinion applies only to judicial process and *not* to pretrial or post-trial matters and since Jeffrey Fischer and

his legal custodian parents consented to all interrogation (at all of which Jeffrey *exercised* his right to confess or not to do so) and had counsel prior to and at his trial, and since the police were *very* fair and kind in their treatment of Jeffrey it is submitted that no violation of this ruling in the *Gault* case has occurred in the Fischer case. Moreover, considering the magnitude of Jeffrey's illegal acts and the losses they caused, Jeffrey and his parents are very fortunate that this case was not turned over as a criminal case to the Common Pleas Court by Judge Whitlach.

4. *"Juvenile proceedings to determine delinquency which may lead to a commitment to a state institution must be regarded as criminal for purposes of the privilege against self incrimination."*

In this case no illegal means was used to obtain Jeffrey's confession. He and both his parents consented in writing, his parents viewed and heard his confession, which was purely voluntary, and complimented the police for their kindness to Jeffrey. Not even the psychiatrists said there was anything wrong with it. Jeffrey's parents were and are his legal guardians and custodians. By express provisions of Ohio statutes this is not a criminal proceeding.

Even if the herein concerned proceedings were, or are, criminal it is submitted that the evidence plainly shows that no Constitutional rights were violated; that appellant has, at all times concerned, been very fairly and considerately treated; that his confession is clear, adequate and was properly obtained and supported by adequate corroboration. Pending final decision Jeffrey Fischer is still living at home and has never been confined, nor is there any order for his imprisonment nor has there ever been any such order.

In conclusion we wish to say that after reading the rules of this Court and knowing the heavy pressure under which this Court operates we have cited very few references to the record but will be glad to furnish to this Court any parts of the record relating to any statements herein that the Court wishes to see, hoping that by so doing we may reduce the work of the Court. We can substantiate from the record *all* facts and evidence herein mentioned.

It is submitted that this appeal should be denied.

Respectfully submitted,

JOHN T. CORRIGAN,
Prosecuting Attorney of
Cuyahoga County,

By FREDERICK W. FREY,
Assistant Prosecuting Attorney,
Attorneys for Appellee.

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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. [redacted] 229

In the Matter of
JEFFREY FISCHER,
a minor.

APPEAL FROM THE COURT OF APPEALS,
EIGHTH JUDICIAL DISTRICT OF OHIO.

APPELLANT'S REPLY BRIEF TO APPELLEE'S ALTERNATIVE MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT OF LOWER COURT.

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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1461.

In the Matter of
JEFFREY FISCHER,
a minor.

APPEAL FROM THE COURT OF APPEALS,
EIGHTH JUDICIAL DISTRICT OF OHIO.

APPELLANT'S REPLY BRIEF TO APPELLEE'S ALTERNATIVE MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT OF LOWER COURT.

The State in its Motion to Dismiss has raised a welter of arguments, none of which affect the essential issues of this case. The State's smokescreen can be reduced to three simple contentions:

1) that Jeffrey Fischer had Counsel *at his trial,* and that because of this alone, this trial as a civil proceeding met all the constitutional requirements of due process and fair trial,

2) that Jeffrey Fischer was treated gently and kindly at the police station,

3) that the confession of Jeffrey Fischer, to the extent that it accorded with the testimony of other witnesses, must have been true and reliable and therefore was rightly admitted at trial in spite of his repudiation thereof.

To this the State adds many wild and irrelevant arguments, many of which do not even merit a response herein. They are largely devoted to showing the guilt of appellant and the truth of his confession (but see *Rogers v. Richmond*, 365 U. S. 534, 81 S. Ct. 735, 5 L. Ed. 2d 760 [1961]) apparently on the theory that constitutional deficiencies may be ignored if the State argues loudly enough the guilt of the Defendant and unusual gentleness and consideration with which he was supposedly treated.

Most remarkably, the State appears to have chosen this Court as yet another forum in which to argue that appellant set the fires in question, and that he was given more consideration than so obviously "guilty" a youth deserves. *These issues have no place in this appeal.*

What are the real issues in this case upon which jurisdiction is sought? All the State's persiflage cannot deny or obscure the fact that at no time when Jeffrey Fischer was *in the police station* allegedly confessing, were either he or his parents:

1) Represented by counsel,

2) Advised of the right to have counsel,

3) Advised of the right to remain silent,

4) Advised of the right against self-incrimination.

These deficiencies raise fundamental constitutional questions which this Court has taken pains to answer—for adults in criminal proceedings—in *Escobedo v. State of Illinois*, 378 U. S. 478, 84 S. Ct. 1758, *Miranda v. State of Arizona*, 384 U. S. 436, 86 S. Ct. 1602, and a host of other decisions. Nor can the State argue that such questions are any the less fundamental merely because a *juvenile* seeks the constitutional guarantees of due process. Whether or not appellant's mother complimented and

thanked the police—or any other similarly trivial matter raised by the State—simply has no bearing on the major constitutional deficiencies of police station procedure presented in the case at bar.

Application of Gault, 87 S. Ct. 1428, left unresolved "constitutional rights applicable to the pre-judicial stages of the juvenile process." Precisely such questions are raised by this appeal, which for juvenile proceedings stands in much the same relation to the *Gault* decision as the *Escobedo* and *Miranda* decisions stand to *Gideon v. Wainwright,* 372 U. S. 335, 83 S. Ct. 792 and other decisions protecting the rights of the accused at trial itself.

The spirit of the *Gault* decision, as exemplified in Section V, "Confrontation, Self-Incrimination, Cross-Examination," should be extended to encompass the constitutional rights of the juvenile under police-station interrogation. This Court in that decision turned its attention to the admission of improperly obtained confessions in juvenile court hearings.

> "Specifically, the question is whether, in such a proceeding, an admission by the juvenile may be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent. In light of *Miranda v. State of Arizona,* 384 U. S. 346, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), we must also consider whether, if the privilege against self-incrimination is available, it can effectively be waived unless counsel is present or the right to counsel has been waived." *Gault, supra,* at 1452.

This Court spoke with approval of *In Matters of W. and S.,* 19 N. Y. 2d 55, 277 N. Y. S. 2d 675, 224 N. E. 2d 102 (1966) and *In Interests of Carlo and Stasilowicz,* 48 N. J. 224, 225 A. 2d 110 (1966), two decisions in which a

delinquency determination was set aside because a confession was found inadmissible.

This Court then answered the frivolous contention of the State in the case at bar that weight must be given the "civil" label attached to Ohio Juvenile Court proceedings.

> "It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children. The language of the Fifth Amendment, applicable to the State by operation of the Fourteenth Amendment, is unequivocal and without exception. And the scope of the privilege is comprehensive. As Mr. Justice White, concurring, stated in *Murphy v. Waterfront Commission*, 378 U. S. 52, at 94, 84 S. Ct. 1594, at 1611, 12 L. Ed. 2d 678 (1964):
>
> 'The privilege can be claimed in *any proceeding*, be it criminal or civil, administrative or judicial, investigatory or adjudicatory, * * * it protects *any disclosures* which the witness may reasonably apprehend *could be used in a criminal prosecution or which could lead to other evidence that might be so used.*'" (Emphasis supplied.) 79. *Gault, supra,* at 1454.
>
> "* * * In the first place, juvenile proceedings to determine 'delinquency,' which may lead to commitment to a state institution, must be regarded as 'criminal' for purposes of the privilege against self-incrimination. To hold otherwise would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has been attached to juvenile proceedings." *Gault, supra,* at 1455.

The State in its Motion to Dismiss (page 8) admits:

> "Moreover, in this case the Fischers were most fortunate indeed that Juvenile Judge Whitlach did not refer this case to the grand jury and Common Pleas

> Court as a felony, which he had a legal right to do under Ohio Revised Code, Sec. 2151.26."

The fact that a criminal prosecution could be instituted was precisely the second reason enumerated in the *Gault* opinion (page 1456) why safeguards must be granted to the juvenile defendant whose confession is sought.

This Court concluded by emphasizing the importance of the presence of Counsel and of taking "the greatest care" to insure the voluntariness of an admission (*Gault, supra,* page 1458), and it drew no distinction that would make these requirements any the less essential for the juvenile in the police station than for the juvenile in court. If anything, the *Gault* opinion adumbrates that the juvenile suspect, as much as and even more than the adult, needs the safeguards of the Fifth, Sixth, and Fourteenth Amendments more urgently in the stationhouse than at trial.

The "confession" of Jeffrey Fischer was first obtained by Officer Carr, out of the presence of Gerald's parents, without counsel and without advising him of his right to silence. It was the "confession" of a psychologically disturbed seventeen-year-old, subjected to lie-detector tests, shut up in an interrogation room apart from his parent, and never informed of his right to have counsel or his privilege against self-incrimination.

This confession should have been excluded because it was taken in a manner that failed to satisfy the elementary dictates of due process enunciated by this Court, not only the requirements of *Miranda* and *Escobedo,* but also basic concepts of voluntariness alone. Due process is not satisfied by a juvenile court hearing at which such a confession is admitted and forms the major basis for the adjudication of delinquency. The *Gault* decision explicitly recognizes this.

CONCLUSION.

Jeffrey Fischer, defendant-appellant herein, was not represented by Counsel or informed of his right to Counsel and right to remain silent at the time of his police-station confession. The arguments of the State cannot becloud this simple fact. It is respectfully submitted that, in accord with the principles laid down in the *Gault* decision, this Court should grant a summary ruling by which jurisdiction is exercised and the case reversed, or at the very least remanded for further proceedings not inconsistent with the *Gault* decision.

Respectfully submitted,

DAVID I. SINDELL,
Counsel for Appellant.

In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 229.

In the Matter of
JEFFREY FISCHER,
a minor.

SUPPLEMENTAL BRIEF OF APPELLEE.

The Appellee's reply brief contains certain arguments that appellees have had no opportunity to answer until now. And it is submitted that this case contains facts which have not been passed upon by this Court, but which, it is submitted, plainly remove this case from the legal rules declared by this Court in the *Escobedo, Miranda,* and *Gault* cases. The argument in this brief will be short.

This is a case where a 17 year old boy voluntarily confessed to the setting of five garage fires, giving the details as to when and how he set each fire, resulting in substantial damage. This boy was questioned five times by the police who treated him with unusual fairness and kindness and who in no way forced or wrongfully induced said confession. After the confession, which the parents saw and heard, the parents twice complimented the police on their kind and fair treatment of Jeffrey Fischer, which they admit. Both the parents and Jeffrey consented to all questionings by the police and the two lie detector tests were given only after conferences by police with Jeffrey and his parents, each of whom signed written consent to said lie detector tests and the questioning thereafter. After the second and final lie detector test the parents specifically

consented to the final questioning of Jeffrey and so did Jeffrey.

In all these questionings *Jeffrey fully exercised his constitutional rights* in that he refused to give the true facts until he *voluntarily* did so after the last lie detector test. The *details* as to the starting of these fires *as given by Jeffrey* are *corroborated in detail* by five expert witnesses and six other witnesses who were not fire experts. If Jeffrey did not start these fires how could he know and give accurate testimony as to the details of said fires? And what better or more detailed corroboration could be desired?

It is submitted that this case substantially differs from the *Escobedo*, *Miranda* and *Gault* cases both as to the facts and law. In those cases there is no doubt that the accused was denied his constitutional rights. In this case that is clearly untrue. In this case all police action was talked over with the parents and Jeffrey *before* any action or questioning of Jeffrey occurred. The evidence of the truth of this fact is borne out by the testimony on *both* sides of the case. At all times before the police questioned him Jeffrey and his parents specifically consented to said police questioning and lie detector tests. In all questioning and lie detector tests the police were most kind and fair and *it is most important to remember that at all times in all questioning and lie detector tests Jeffrey fully exercised his constitutional rights to remain silent as to starting said fires without any pressure from the police. When Jeffrey did confess he was under no police pressure but he obviously was under the pressure of guilt feelings. For a guilty person to suffer from guilt pressure and confess of his own free choice creates no violation of constitutional rights.* A cord: *Rodgers vs. Richmond*, 365 U. S. 534, 5 L. Ed. (2) 760 (headnote 4).

By Ohio statute this is a civil and *not* a criminal case, but this Court has held that in the case of juveniles that makes no difference so far as constitutional rights of juveniles are concerned. In this case Jeffrey Fischer was committed by the Juvenile Court to the Ohio Youth Commission in Columbus, which is purely and entirely a rehabilitational institution and is in no sense a criminal or penal institution. But at all times herein concerned Jeffrey has been, and is, living at home with his parents. If he goes to said Youth Commission he will be released when he becomes 21 years old (in a little over one year from now). It is submitted that even if this Court treats this case as a criminal case there is no violation of any constitutional or legal rights concerned herein.

To come to the essence of this case it is a case where the facts unquestionably and plainly show, from evidence on *both* sides of the case, that:

1. the confession of Jeffrey was in no way forced or induced by wrongful or illegal means;

2. that the evidence plainly shows, by some admissions of Jeffrey, by the testimony of psychiatrists and by other evidence that Jeffrey confessed because of a guilt feeling caused by what he knew he did;

3. that Jeffrey's parents never would have twice complimented the police on their kind and fair treatment of Jeffrey, *after* his confession, unless they were fully satisfied with police treatment and lack of police pressure;

4. that Jeffrey's detailed confession, fully corroborated by 11 witnesses, including 5 fire experts, could leave no reasonable doubt that Jeffrey started the concerned fires.

It is submitted that even though an accused is not warned of his constitutional rights, if the accused exer-

cises those rights, is not pressured and is most kindly and fairly treated, and confesses voluntarily because of real guilt pressure in his own mind no violation of constitutional rights exists. How could it?

As to counsel the Fischer family had legal counsel for some time *before* trial and at all times *during* and *since* trial. When an accused *exercises* his constitutional rights and his confession is really voluntary, the absence of counsel during that period of time is *no* violation of constitutional rights.

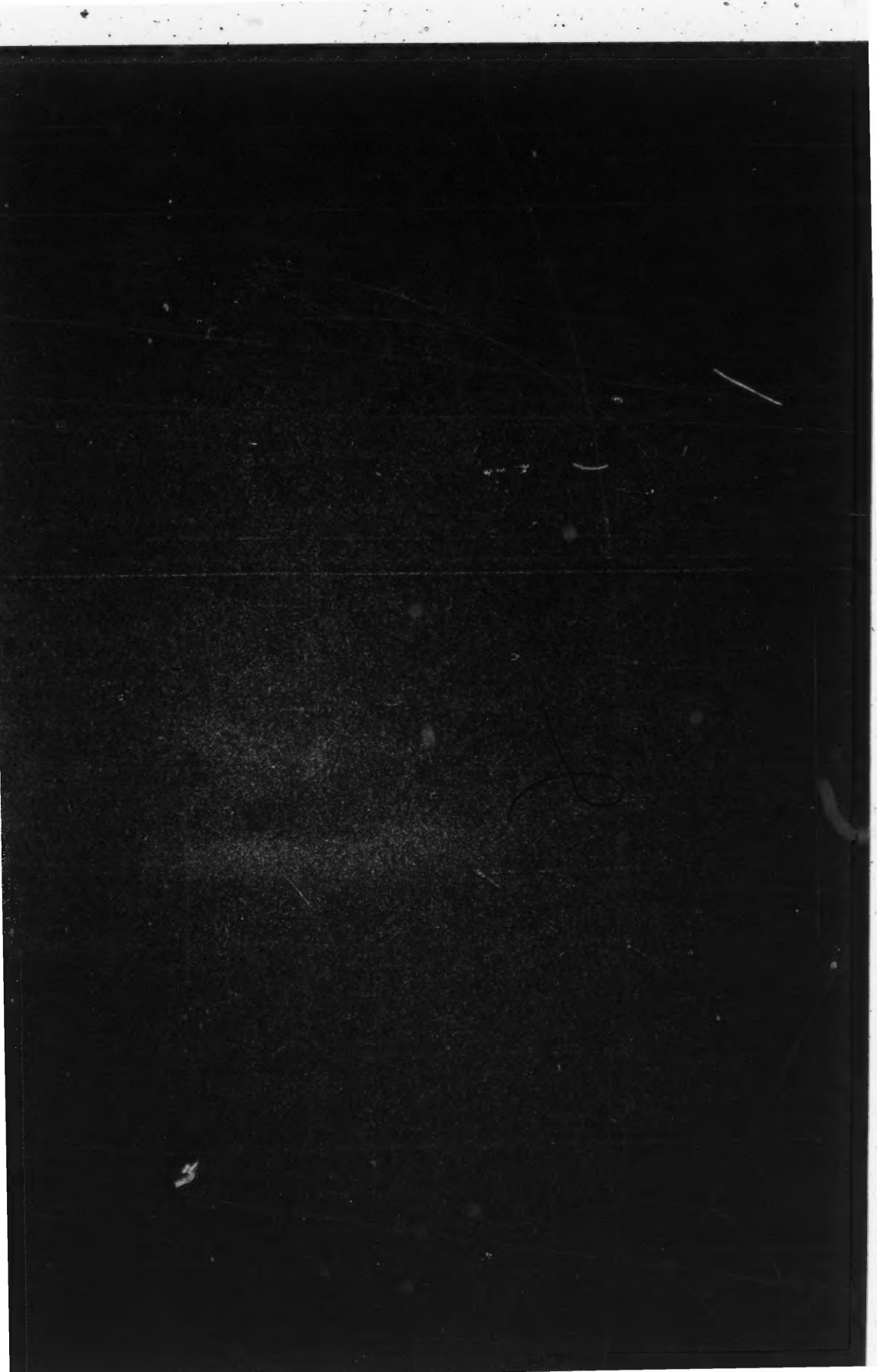
This brings us to a very important question: how far may courts go in protecting people who commit very serious crimes, the proof of which is clear and certain? Certainly a government and its citizens are clearly entitled to protection against crime and persons committing criminal acts. Freely granted that people are entitled to their constitutional rights, but it is equally certain that that protection cannot be legally or morally justified if it exceeds what is reasonable and fair to the government and the injured people concerned. It is submitted that in this case the State's proof and the decision of the Juvenile Court are entirely valid and that Jeffrey Fischer is exceedingly fortunate that he was not charged with the commission of any crime.

It is submitted that this appeal should be dismissed at appellant's costs.

Respectfully submitted,

JOHN T. CORRIGAN,
Prosecuting Attorney of Cuyahoga County,

BY FREDERICK W. FREY,
Assistant Prosecuting Attorney,
Attorneys for Appellee.



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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 229.

In the Matter of
JEFFREY FISCHER,
a minor.

APPEAL FROM THE COURT OF APPEALS,
EIGHTH JUDICIAL DISTRICT OF OHIO.

SUPPLEMENTAL BRIEF OF APPELLANT.

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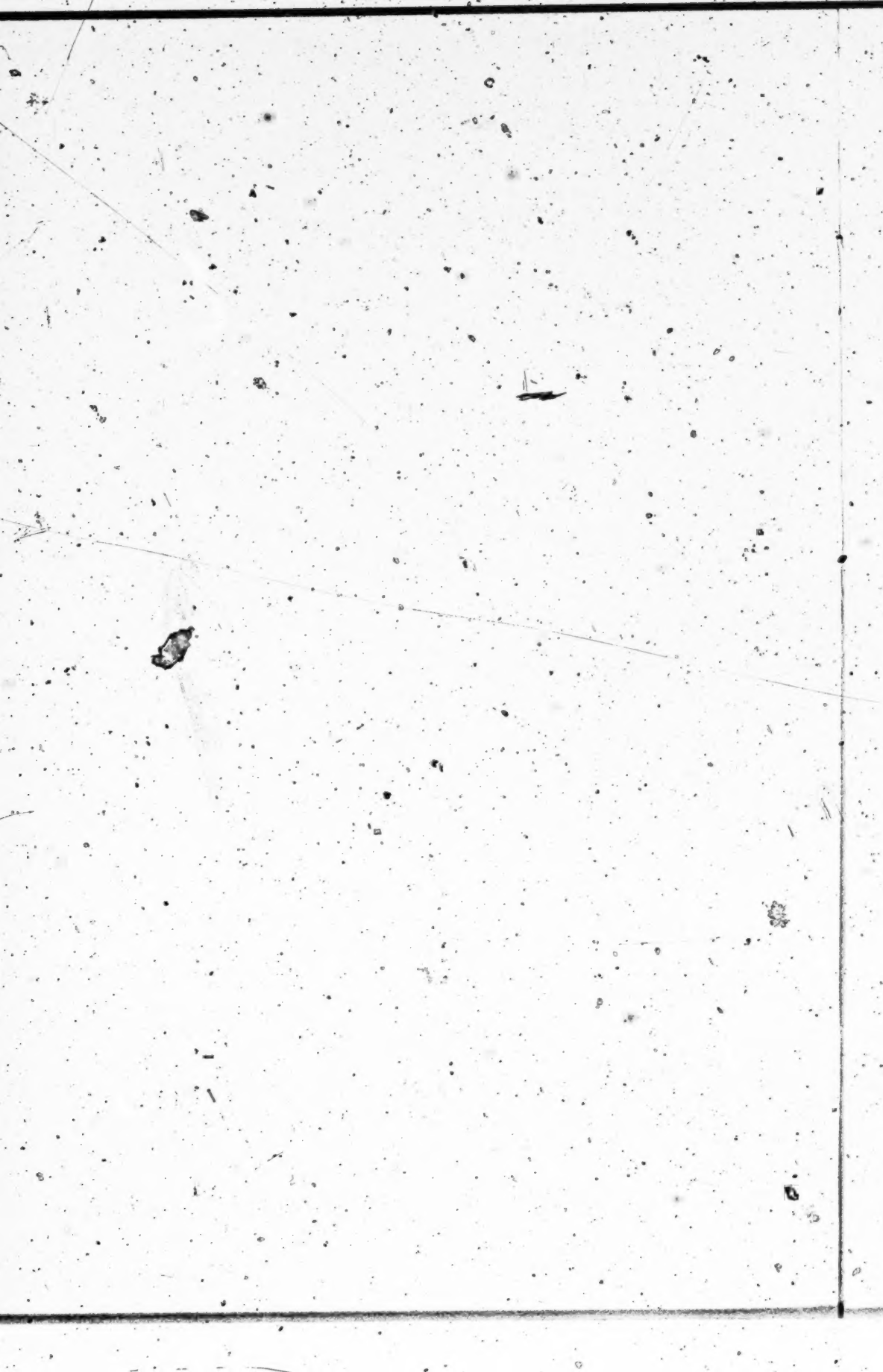

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In the Matter of
JEFFREY FISCHER,
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APPEAL FROM THE COURT OF APPEALS,
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SUPPLEMENTAL BRIEF OF APPELLANT.

The State, Appellee herein, does not and cannot in its Supplemental Brief deny that when Appellant Jeffrey Fischer gave his confession in the police station, neither he nor his parents were: (1) represented by counsel; (2) advised of the right to have counsel; (3) advised of the right to remain silent; (4) advised of the right of self-incrimination. Instead the State blithely asserts that "Jeffrey fully exercised his Constitutional rights," that he consented to his interrogation, and that his confession was voluntary. Such unfounded assertions assume the very issues raised by this appeal.

Appellant submits that his alleged "consent" to interrogation and that of his parents can in no sense be meaningful since neither he nor his parents were warned of their rights under Amendments V, VI, and XIV. It is clear since *Miranda v. State of Arizona*, 384 U. S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, that waiver or consent under such circumstances will be given no effect.

Furthermore, it is nonsense to argue, as does Appellee, that Jeffrey fully exercised his Constitutional rights to remain silent merely because he would not confess at once. The State apparently claimed that a confession made after a period of interrogation is voluntary because the suspect voluntarily refrained from confessing beforehand. It is far more plausible to see the interrogation as one of mounting police pressures, rather than follow the amateur psychology indulged in by the State's unsupported claim of "pressure of guilt feelings."

This Court has made it clear in the *Escobedo, Miranda,* and many other decisions, that there are certain minimum prerequisites or criteria which must be met before a confession will be held admissible. Basic thereto is the necessity that the suspect, and/or his parents in this case, be meaningfully and effectively advised of their son's Constitutional right to counsel and to remain silent. In the instant case, this was not done. There is then no need even to reach the State's dubious speculation on voluntariness, and its incredible claim that the defendant, much less the juvenile offender, is not entitled to his Constitutional rights, if—as the State asserts, his guilt is "clear and certain."

This Court in *Application of Gault,* 87 S. Ct. 1428, at 1458, declared that the greatest care was to be taken to insure the voluntariness of a juvenile's admission. Appellant submits that the *Gault* decision should be taken to embrace the juvenile offender in the police station and the due process requirements enunciated in the *Miranda* and *Escobedo* cases. Only in this manner can the juvenile's rights under the Fifth, Sixth, and Fourteenth Amendments be fully safeguarded.

It is once more respectfully submitted that this Court should grant a summary ruling by which jurisdiction is

exercised and the case reversed, or at the very least remanded for further proceeding, not inconsistent with the *Gault* decision.

Respectfully submitted,

DAVID I. SINDELL,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

IN THE MATTER OF JEFFREY FISCHER.

APPEAL FROM THE COURT OF APPEALS OF OHIO, CUYAHOGA COUNTY.

No. 229. Decided June 3, 1968.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.

MR. JUSTICE DOUGLAS and MR. JUSTICE FORTAS are of the opinion that certiorari should be granted, the judgment vacated, and the case remanded for further consideration in light of *In re Gault*, 387 U. S. 1.

MR. JUSTICE BLACK dissents.